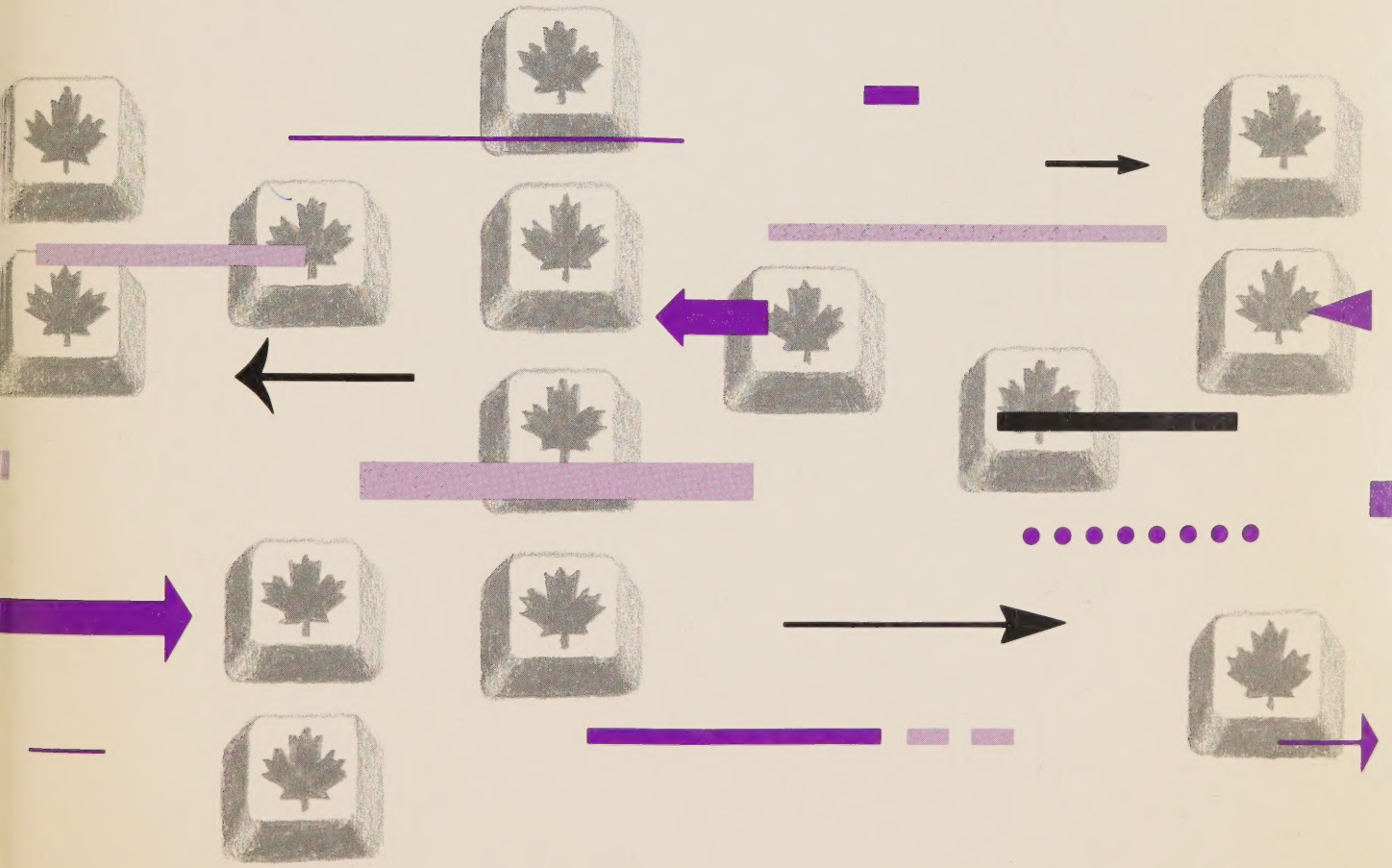
Information Commissioner of Canada
Commissaire à l'information du Canada

The Access to Information Act: A Critical Review



THE *ACCESS TO INFORMATION ACT*:

A CRITICAL REVIEW

The Information Commissioner of Canada
112 Kent Street, 3rd Floor
Ottawa, Ontario
K1A 1H3

(613) 995-2410
1-800-267-0441 (toll-free)
Fax (613) 995-1501

Cat. No. IP34-6/1994E
ISBN 0-662-22683-0

ACKNOWLEDGEMENT

This report was prepared for the Information Commissioner of Canada by Sysnovators Ltd. of Ottawa. The opinions and recommendations it presents are those of the authors and do not represent the official position of the Information Commissioner of Canada.

For the Commissioner's views and recommendations on the subject matter, readers are advised to obtain the *Annual Report -- Information Commissioner 1993-94.* The Commissioner gratefully acknowledges the contribution of this report to ideas presented in the annual report to Parliament.

Copies available in French.

TABLE OF CONTENTS

TABLE OF CONTENTS (continued)

EXECUTIVE SUMMARY

The *Access to Information Act* is now more than a decade old. Conceived in the late 1970s, drafted and passed into law in the early 1980s, the Act was quite radical in its impact. It created an enforceable right of access for Canadians, subject to limited and specific exceptions, and provided for an appeal process for refusal of access independent of government, first, to an Information Commissioner and then to the Federal Court. Despite ongoing criticism of the legislation, there is no doubt that it has served to slowly but nevertheless effectively strip away much of the natural resort to secrecy which has been one of the less useful legacies to the country of British parliamentary government. In short, the Act established new standards for the release of information which required often reluctant Ministers and bureaucrats to embrace the tenets of open, more transparent government. One cannot pick up a thoughtful editorial, public affairs magazine or throne speech and not find these concepts now heralded as one of the essential bases of the "new", more relevant politics.

The Act remains an important centrepiece of Canadian information policy, enshrining an important right which all citizens should cherish and protect. Unfortunately, it is now also showing signs of wear and is of becoming dated. Indeed, the Act is in danger of losing relevance as the country's parliamentary system faces the challenges of the rapidly developing Information Society. A parliamentary review of the legislation was undertaken in 1986 and 1987 by the Standing Committee of the House of Commons on Justice and Solicitor General. The resulting report, *OPEN AND SHUT: Enhancing The Right To Know And The Right to Privacy* made a large number of useful suggestions for both legislative and policy amendments. In its response, *Access and Privacy: The Steps Ahead*, the government of the day chose to agree to few meaningful amendments to either the *Access to Information Act* or its companion legislation, the *Privacy Act*; choosing instead to opt for administrative policy solutions, with an overwhelming emphasis on privacy issues. In any case, even the few legislative amendments proposed were not put in place.

It is fair to say, that seven years later, many of the recommendations in *Open and Shut*, while still relevant, now appear as relatively mundane and cry for inclusion in an amended access act. Perhaps more troubling is the fact that provincial freedom of information legislation, particularly in Quebec, Ontario and British Columbia, is viewed by experts as more progressive than their federal counterpart. As well, the rapid revolution in information technology which is washing over all industrialized nations, the changing international scene, and the obvious need to revamp government and parliamentary institutions are all creating conditions which call for

a much more creative, innovative and strategic approach to the accessing, dissemination and unfettered use of federal government information.

All this presents pressing reasons to pursue reform of the *Access to Information Act*. It is precisely to inform the debate for reform that the Information Commissioner of Canada has commissioned this critical review of the Act, as well as surrounding information law and policy. The aim is to present options and approaches for amendment of the access legislation which will help assure that it remains an important cornerstone of national policy as the country positions itself for the Information Age.

Chapter 1

OF GENEALOGY AND NEW DIRECTIONS

Overview

Open and accessible government is an essential part of effective democracy. At the present time, it is fair to say that citizens have never been so alienated from their governments since the national crisis of the Great Depression. Federal services, including availability of information, are ranked last by the public, pitifully behind municipalities, and even the much maligned Post Office, which seems to have slipped out of being viewed as a federal institution. As Peter Calami stated last year in an *Ottawa Citizen* Op Ed page, "Canadians simply have stopped believing that their institutions - schools, churches, the media, government - are accountable".

The problem of accountability, with its sub-themes of openness, accessibility and responsiveness, appears to be a recurring theme within modern democracies. Indeed, a crisis in public disaffection has been endemic within the Canadian political process since the late 1960s. In 1968, the seminal Report of the Task Force on Government Information, *To Know and Be Known*, recommended a general national information policy based on a declared recognition of the government's duty to inform the public, the people's right to information, information dissemination and policy consultation in support of "participatory democracy" and social and cultural goals, transmission of scientific and technical information to underpin economic development and educational excellence, regional information offices and establishment of a "federal presence".

Most current federal information policy initiatives, including considerable portions of the *Access to Information Act*, can trace their origins back to *Know and Be Known*. Despite some false starts, such as the unfulfilled experiment with Information Canada, the Task Force fastened upon the Canadian public policy psyche some important approaches for dealing with citizen alienation. Born of the concerns, challenges and potential of the "youth revolution" of the 1960s, its members warned of "resentment about the gap between the old promises of democratic rhetoric and the frequently bitter realities of what the system actually delivered". No fairer description could be given of today's political malaise. The Commissioners opined that it was too simple to argue that every dramatic and alarming public development was a direct or sole result of the failure of our democratic system but they did ascribe to James Madison's famous view that "a popular government without popular information or the means of acquiring it is but a prologue to a farce or a tragedy, or perhaps both". One of their major responses was to call for a much more open government, bound by a "duty to inform" the

public and to make accessible that information and data needed by the public to participate intelligently in policy debate and to hold government accountable for the decisions it takes.

These ideas about more responsive, accessible and participatory government would be fused during the 1970s with harder edge of "right to know" and more accountable government. This decade saw a widening distrust of government and bureaucracies which appeared to be distant from the public and lack any accountability for actions taken. Proximity to the United States with its Watergate scandal and dirty tricks campaign brought political pressure for freedom of information reform. Indeed, freedom of information became the rallying cry in the media for basic political reform that a simple access act could not hope to fulfill. This development would cause considerable difficulties when the access legislation was finally introduced in the early 1980s. Nevertheless, relentless public commentary was a powerful force, which pushed the *Access to Information Act* into law in 1982, along with privacy reform, amendments to the *Canada Evidence Act* and later new legal accountability controls on the law enforcement and security agencies.

Once again, in the early 1990s, the cauldron is boiling. A fractious Canadian public is pressing for forms of government which are at once effective, responsive and cost conscious, as well as, accessible, consultative, accountable and with integrity. Parliamentary reform and restructuring of government services are very much on the table in an attempt to address the major disjoint between citizens and governments. Action on reforming the *Access to Information Act* should be front and centre on the legislative agenda.

Recommendation 1: *It is essential that reform of the* Access to Information Act *be undertaken as an important part of the political process now underway to renew Canadian democracy. A study of possible amendments to the legislation should be mandated either through a parliamentary committee or whatever body the current government establishes to replace the Law Reform Commission.*

Recommendation 2: *It is further recommended that the Information Commissioner request the Prime Minister to write to all Ministers to inform them of the importance of adherence to the requirements of the Act to the integrity of government and his intention to undertake open government reform.*

A Question of Leadership

The *Access to Information Act* has been Canada's major legislative response redressing the balance of official secrecy, elitism and non-accountable government. It established a "right to know", set standards for what the government could protect from access and fastened on a Westminister-style government, a system of review of refusals of access, which was independent of ministers. The most notable shortcoming of the legislation was its failure to bring Cabinet Confidences in under the ambit of the access rules. This government amendment, requested by the Prime Minister of the day, Pierre Trudeau and dubbed by Svend Robinson of the New Democratic Party as the "Mack truck" clause, ensured that the Act received a charry reception from the media and other opinion leaders from the very beginning.

In several ways, this was a tragic turn of events. Several important strands were lost in the bittersweet combination of euphoria and virulent criticism which accompanied the Act's passage into law in 1982 and continued as it was brought into force in 1983. One immediate result was the lack of continued, meaningful government and parliamentary leadership on the issue. The last Trudeau government had moved forward with a major accountability and citizens' rights package, which included, among other things, access and privacy legislation; reform of section 41 of the *Federal Court Act,* creation of a civilian security agency, circumscribed by law and parliamentary oversight, and had been intended to include major changes to the *Official Secrets Act*. This was a considerable feat of groundbreaking legislation based on extensive parliamentary debate and ultimately cooperation. There was an understanding in the fields of access, privacy and security that parliament would return three years after passage of each piece of legislation to review its handiwork and recommend changes. In other words, the initial acts were seen as a starting point for ongoing change and adjustment.

This may have been a relatively naive approach but, in any case, with end of that parliament and the election of 1984, the whole thing seems to have run off the rails. The new Conservative government tried to prepare itself to live under the *Access to Information Act*, but the Prime Minister was personally wounded when records of what appeared to be extravagant travel costs were released. The problem was compounded with the "check with Fred" letter sent by the Clerk of the Privy Council to two deputy ministers instructing them to consult with the Prime Minister's Office before releasing information relating to the Prime Minister. All too quickly, the government lost patience with the legislation.

This had a major impact on government leadership responsibilities for the Act which have been and remain fragmented and unclear to the uninitiated. The Minister of Justice oversees suggested changes to the legislation and provides legal advice. The President of the Treasury Board oversees day to day administration of the legislation and issues government-wide policies regarding both interpretation and implementation of the Act and information dissemination generally. The Treasury Board Secretariat carries out this role for the President, on account of its

role as the general manager of government with responsibility to issue policies which govern the operations of departments. There was some tension between Justice and TBS just after passage of the Act, the former wishing to assure a role for itself in regard to the legislation. The respective responsibilities were established by Order in Council. The Privy Council Office has a unique role under the Act in respect of deciding what is and is not a Cabinet Confidence but has sometimes chosen to exercise a more general role of setting an attitudinal tone toward the legislation. This lack of clarity in ministerial leadership and responsibility has perhaps slowed down progress on information policy issues and, in its worst guise, served to send unintended signals to an already reluctant and nervous bureaucracy that openness was not the order of the day. In the late 1980s, the resulting foot-dragging in departments led to a "shooting war" in Court with the Information Commissioner and contributed to the disrepute of the legislation on all sides.

To complicate matters, Parliament, itself, assured that care and nurturing of access legislation and open government initiatives fell to the tender mercies of the federal bureaucracy. This was done more through benign neglect than anything else. The Act included provision for an annual report by departments to Parliament. Members took no interest in what should be reported in these to effectively monitor implementation of the legislation and the reports themselves piled up in the Office of the Clerk to the Standing Committee on Justice and Solicitor General, largely unread.

Members seemed to assume that the public interest in government information issues was being looked after by the small office of their agent, the Information Commissioner. But as the current Commissioner noted in his last Annual Report to parliamentarians, their interest and leadership has been distinctly limited. The Commissioner reports annually and appears before committee once or twice each year to discuss issues and the office's estimates. The *Annual Report* receives media attention for a few days and possibly generates a question or two in the House. However, the Report is usually tabled in June, near the end of the session, and does not receive any sustained committee work such as the Public Accounts Committee provides for the *Auditor General's Report*. This has meant that there has been no sustained attention to problems identified by the Commissioner, which would support that Office in seeking improvements to the legislation and its implementation. It has also meant that little parliamentary research money has been spent on investigating information policy issues since the good work done by the Research Branch of the Library of Parliament, when the access act was in committee stage.

After urging by the Information Commissioner, the Department of Justice and the Treasury Board Secretariat, Parliament did organize itself for the mandated three year review of the legislation. This was done under the auspices of the Standing Committee on Justice and Solicitor General and led by Blaine Thacker, a Tory Member of Parliament from Alberta with ministerial aspirations. Parliamentary

research staff were assigned and two experts, Murray Rankin and David Flaherty, were contracted to prepare the final report. The excellent report, *Open and Shut*, is discussed above and particular recommendations will be dealt with at length later. What is of interest here is that the Committee did not aggressively seek a mandate for ongoing review of the *Access to Information Act*, something that was within its own power (a recommendation weakly asked the government to mandate another three year review); nor, after it became clear that the government was not going to react particularly positively to the Committee's unanimous report for important changes to the legislation, was there any ongoing criticism in Parliament that this was unsatisfactory. In summary, it is fair to say that parliamentary oversight has been, at best, episodic and ineffective, despite receiving good information on which to act from the Information Commissioner.

The upshot of this lack of parliamentary and government leadership has been the cessation of what Parliament originally envisioned as an ongoing process. The *Access to Information Act*, rather than growing and adjusting to the new issues of the Information Age, has stultified and is threatened with losing its relevance in the face of changing government structures and technological innovation. Lack of adequate government leadership at the political level has meant that sound policy developed within the bureaucracy, especially the Treasury Board Secretariat, has often faltered from the lack of clear, consistent and enduring political articulation of intent and support. Any historical review of legislative and policy initiatives in this field will show that there has been systemic problems of leadership, focus and coordination on information issues dating back as early as 1968 that have never been adequately addressed.

Recommendation 3: *That the Information Commissioner meet with the new Speaker of the House of Commons to recommend that a new standing committee be appointed to deal with the pressing issues of the Information Revolution, including ongoing reform of the* Access to Information Act.

Recommendation 4: *That this new Committee set aside time each year to hold hearings on the Information Commissioner's Annual Report and the reports on administration of the* Access to Information Act *submitted annually by government departments. The Committee should be mandated to ask the Commissioner to undertake special studies and would make recommendations for the ongoing improvement of the access act and information policy.*

Recommendation 5: *That the Committee be given research funds to carry on studies of information issues of interest to Parliament and the Canadian public, similar to the role*

of the United States Congress' Office of Technology Assessment. Another approach would to mandate the Office of the Information Commissioner as the research and policy arm for the Committee.

Recommendation 6: *That a single Minister, preferably the President of the Treasury Board, be named as responsible for the* Access to Information Act *and that the Treasury Board be the Committee of Cabinet which considers access to information and government information dissemination issues.*

Recommendation 7: *That consideration be given to co-locating the Information Law and Privacy Section of the Department of Justice and the Information, Communications and Security Policy Division of the Treasury Board Secretariat in order to provide a statement of leadership on information issues and a critical mass of staff to work on legislative and policy solutions.*

A Broader Approach To National Information Policy

The second important strand that was lost as the *Access to Information Act* came into effect was ongoing attention to subsection 2(2) of the legislation. This clause provided that the Act was intended to complement not replace other ways of providing information to the public. This was known as the Walter Baker clause after the veteran Tory member for Nepean - Carleton. Baker and others sensed that it was important that the single request mechanisms of the Act not become the major focus for how citizens obtained information from their government. The amendment was added at the Committee stage, with all parties contending that the Act should become a powerful new standard for encouraging government departments to embrace openness and release a wide range of information informally, without a request having been filed.

Unfortunately, this is not really what occurred. As departments nervously began dealing with individual requests, quite often of a controversial nature, they began to manage exemptions and not promote openness. Indeed, some information, which previously had been released to the public, was shut down, largely because it was deemed in violation of the privacy or third party provisions of the legislation. Baker's worst fears now became a reality. Politicians and bureaucrats looked to the *Access to Information Act*, with its single request and, at times, confrontational, time-consuming approach, as the base line for responding to the public. A common refrain when dealing with a troublesome client seeking information was to challenge the individual to "make an access request".

Treasury Board Secretariat tried to address this problem in policy terms under the Act. This was to little avail, in part, because there was no comprehensive, countervailing public information law or policy which placed obligations on departments to actively make information available to the public in an organized form outside the *Access to Information Act*. To make matters worse, the Act exempted from its coverage "published material", making the naive assumption that this type of government information would be either neatly catalogued and ready for access in government or public libraries or available for sale. This was an ill-based assumption. In truth, many government departments have poor control over what they publish, many departmental libraries lack a mandate to enforce collection of the publications of their organization and are not open to the public, and the Depository Services Program, which is supposed to distribute government publications to libraries across the country, is not complete in its coverage and is dominated by university libraries as opposed to public libraries, which directly serve citizens.

This situation was both mitigated and complicated in the mid-1980s. In 1986, Treasury Board approved the *Management of Government Information Holdings Policy* which required that departments inventory and assert better control over all their information holdings, including publications. Likewise, in 1988, the *Government Communications Policy* was approved. This policy finally imposed a "duty to inform" on departments and charged them with disseminating information, including databases, outside the *Access to Information Act*. This "duty" requires institutions to provide information to the public, at little or no cost, about their policies, programs and services that is accurate, complete, objective, timely, relevant and understandable.

Unfortunately, these policy initiatives were complicated by other seemingly unrelated measures. The Conservative government's preoccupations with smaller government, more efficient operations through use of the private sector and reduction of the cost of government through user fees led it to support licensing of databases to the private sector and the contracting out of various information services. There is certainly nothing wrong with the vast majority of database licenses that have been signed. Rather, it is the absence of any law or policy defining the "public" interest in government information and the lack of a process that ensures an appropriate balance between this interest and the needs of the public purse, which is the problem.

For similar reasons, the Conservatives moved to create a number of Special Operating Agencies, one of which was the Canada Communication Group, formerly the Queen's Printer. Such agencies were removed from many bureaucratic controls, their services made optional and they were asked to compete in the marketplace to sell those services to government. Once again, the overall objective was a good one and in this case reduced the cost of communications services to government. The ancillary problem that this produces, however, is that CCG played a policy and control role in meeting the public interest in government

publishing. This is now removed and there is a vacuum with each department left on its own to interpret legal and policy requirements. Such requirements need to be articulated clearly and without ambiguity with central leadership on issues and auditing of compliance.

Given these various developments, it is no longer acceptable to talk about specific narrow changes to the existing *Access to Information Act*. While that legislation has served well in enshrining the "right to know", it has also come to express a single request, confrontational approach to information provision which is not entirely appropriate for an information society. It is absolutely necessary to preserve the legal advances made by the legislation as the ultimate guarantee of information access for the citizen but to surround this with general principles relating to the importance of federal government information in modern Canadian society. This means returning to those issues of general access to and dissemination of information which Walter Baker sensed so clearly and to include provisions which deal with this important area in more than a desultory and passing manner.

Indeed, information is the glue that binds most government organizations and is one of the essential services or products that citizens demand from government. It is time to consider legislation aimed at promoting timely and equitable access to government information in support of business, industry, education, science and individual citizens via a diverse array of sources, both public and private, including provincial and municipal governments and public libraries. Such legislation would recognize that:

> the federal government is the largest single collector and disseminator of information;
>
> government information is a valuable national resource which provides the public with knowledge of government, society, and the economy;
>
> information is a means to effectively manage the government's operations and ensure accountability; can help maintain the healthy performance of the economy; and is itself, under appropriate circumstances, a commodity in the marketplace; and
>
> the free flow of information between the government and the public is essential to a democratic society.

Such an approach should affirm four important points, in a new section of the Act entitled "Government Information - General Management, Access and Dissemination". The first point involves management of information and disclosure. Because the public disclosure of government information is essential to the operation of a democracy, management of federal information holdings should protect the public's right of access to government information. Section 70, powers

of the designated minister, should also be revamped to provide that Minister with authority to prepare government institutions to meet this challenge. As well, as is discussed in Chapter 4, the Information Commissioner should be given powers to investigate compliance with these goals.

The second point should be an affirmation of the obligation of government institutions to provide for public access to records where required or appropriate. This would be a legal statement expressing that government institutions have a responsibility to provide information to the public consistent with their missions by:

> providing information describing institutional organization, activities, programs, meetings, systems of information holdings and how the public may gain access to these information resources; and
>
> providing direct electronic access to institution information holdings, as appropriate and practical;

The obligation to provide access should be buttressed by an additional obligation to actively disseminate information which can be considered part the institution's "duty to inform" the public or may be considered of interest to the public or is essential to the performance of the institution's mission. This should be accompanied by direction to institutions to employ electronic information dissemination mechanisms where this is appropriate, practical and cost-effective and the product is easily accessible and useful to the public.

Finally, there should be a section entitled "Avoiding Improper Restrictions on Information" which establishes criteria governing dissemination by government institutions and private sector partners, including user charges and royalty payments. These might read as follows:

> avoid establishing, or permitting others to establish on their behalf, exclusive, restricted, or other distribution arrangements that interfere with the availability of government information on a timely and equitable basis;
>
> avoid establishing restrictions and regulations, including charging fees or royalties, that would preclude a member of the public obtaining access to an information product for his or her own use;
>
> set user charges for information dissemination products at a level sufficient to recover the cost of dissemination but no higher, excluding costs of collecting and processing the information. Exceptions would be:

- where statutory requirements are at variance with this principle;

- where the institution collects, processes, and disseminates the information for the benefit of a specific identifiable group beyond the benefit to the general public;

- where an exception is approved by the designated Minister after review by the Information Commissioner.

These amendments would substantially alter the nature of the *Access to Information Act* but, at the same time, they would build on concepts already contemplated notionally in the legislation. Reference has already been made to the "Walter Baker" clause, the current access directory provisions in section 5 anticipates providing information about government information; the reading room concept in sub-section 71(1) for manuals presages service centres; the exclusion of published materials in section 68 assumed the proper organization of such documentation for either library reference or purchase; the duty of the designated Minister in paragraph 70(1)(a) to "cause to be kept under review the manner in which records. . .are maintained and managed to ensure compliance with the provisions of the Act . . ." was a somewhat crude and ineffective way to emphasize the importance of proper records organization to access to information.

These were true Canadian innovations when the Act was drafted and served as an important legislative basis for the far reaching administrative information policies brought into force by Treasury Board throughout the 1980s. These approaches were quickly replicated by the Americans in the *Paperwork Reduction Act,* which introduced information resource management concepts to the United States government and Office of Management and Budget, *Circular A-130*, which establishes a national information policy. No other jurisdiction in Canada, or for that matter the Commonwealth, with the exception of some rudimentary steps at the end of the British Columbia legislation, has moved in this direction and this accounts for their overall weaknesses in being able to sort out the issues and problems facing government in the Information Age. Canada should continue with its innovative approach.

To accommodate these enhancements, it is necessary to change the name of the Act. At a bare minimum, the title should be changed to the "Freedom of Information Act". This would parallel the title of similar legislation around the world and would be more affirmative of the rights set out in the Act. A more innovative approach, which would support a broader reform, would be "National Information Act". This would appropriately describe legislation setting out general criteria as to public rights in information, going beyond the right of access to establish government information as a national resource vital to the country's social, cultural and economic development and assert that the unimpeded flow of information between government and citizen is crucial to open, accountable government. Legislation that mandated national reference systems, good organization of information and its active dissemination. Legislation that establishes rules of the road for pricing government information, from free access,

through cost of dissemination, up, perhaps, to full cost recovery. Such legislation would also see an expanded role for the Information Commissioner in looking at and commenting on government organization of information, its public reference systems and dissemination, database licensing, and charging mechanisms and practices.

There is always a debate whether it is necessary to express all these requirements in law. It is fashionable today to talk about minimal law and more government policy, criteria and standards. These latter instruments have been applied to information issues through Treasury Board policy over the 1980s, with some modest success. But the need is now for a seachange of attitudes and practices. Only legislative requirements, with strict parliamentary accountability, will provide the proper incentives to move the federal bureaucracy to the open channels of communication appropriate to an information society. The most desirable alternative should be to set out the appropriate obligations and performance criteria for access to and dissemination of all government information in a new "National Information Act". A second best alternative would be to set these out in other legislation, such as an amended *National Library Act*, which is then referred to in a renamed *Access to Information Act*. A third best alternative would be to establish regulations and policies which derive the power of law from the access act itself. All these approaches would, with varying effectiveness, make the Act the touchstone it should be for dealing with all information access and dissemination issues.

Recommendation 8: *That the strategy for amending the* Access to Information Act *be a broad one which preserves and strengthens the "right to know" as the ultimate guarantee of information access for the citizen but surrounds this with general principles relating to the importance of government information in modern Canadian society.*

Recommendation 9: *That the title of the Act be changed to either the "Freedom of Information Act" or the "National Information Act", preferably the latter, to better express its purpose and intent.*

Recommendation 10: *That the purpose statement in sub-section 2(1) of the Act be amended to include the idea that unimpeded flow of information between the government and the public is essential to open, accountable government and that government information is a valuable national resource which provides the public with knowledge of government, society, and the economy is a means to effectively manage the government's operations and*

helps maintain the healthy performance of the economy, and is itself, under appropriate circumstances, a commodity in the marketplace.

Recommendation 11: *That a new section be added to the Act entitled "Government Information - General Management, Access and Dissemination" which contains provisions emphasizing the protection of the public's right to information as an objective for the management of government information, affirming the obligation of government institutions to provide for public access to records and to actively disseminate some types of information; requiring government institutions to employ electronic information dissemination mechanisms where this is appropriate, practical, and cost-effective and the product is easily accessible and useful to the public; and establishing criteria for "Avoiding Improper Restrictions on Information Dissemination". In a consequent amendment, section 70 of the Act, powers of the designated Minister, should be revamped to provide the Minister with the authority to guide government institutions in meeting the requirements to protect the public's right of access to government information.*

Recommendation 12: *That section 30 of the Act be amended to include powers for the Information Commissioner to review the organization of information in government for purposes of access and dissemination, the appropriateness of public reference and charging mechanisms and to investigate all submissions for licensing databases.*

Recommendation 13: *That section 68 of the Act be amended to eliminate the exclusion of published material from the coverage of the legislation, and that, in addition, that government institutions are required to organize, catalogue and advise the public of the existence of all government publications, including grey literature, through the inventory and government locator system described in the next section.*

Access and Information Technology

The third strand which was lost after 1983 was any attempt to deal with the myriad changes in information technology. Once again, the Committee considering the legislation at its inception sensed the need to act. By definition, machine readable records were covered by the *Access to Information Act*. Several members of the Committee sensed, however, that this type of documentation was more difficult to deal with. The Committee added sub-section 4(3) which provided that any record requested under the Act which does not exist but can, subject to regulatory limitation, be produced from a machine readable record under the control of a government institution using computer hardware/software and technological expertise, normally used by the government institution, shall be deemed to be a record under the control of the government institution. This made a good chunk of electronic data buried in structurable databases available that otherwise would not have been accessible in useful form.

These were relatively crude add-ons but they did place the Act ahead of the *Freedom of Information Act* in the United States. There remains, however, several factors which should be addressed to adjust the Act to the technological revolution, including definitional problems and fees for computer generated information which were out of date when they were included in the legislation. The fees provisions simply cannot be applied in the world of personal computers, rapid custom programming and networks.

On the more macro level, the federal government is firmly recognizing and moving to digital dissemination of information products on the so called "electronic highways". To remain relevant, the *Access to Information Act* must adapt to this emerging situation. As discussed earlier in the chapter, the Act should mandate a government-wide network, which in some circles is now being called the *Canada Information Network*, that would serve as a focal point for locating and accessing government information sources and services, which will rapidly become increasingly available in electronic form. This would position the legislation as an essential regulating factor for the federal government interchanges on the electronic superhighway.

This locator system would aid both in ensuring low cost public access to information and also serve to identify information holdings which may be appropriate for the government itself to sell as value added products or broker to the electronic publishing industry dissemination on private information services. Such an approach will require a more sophisticated look at the nature of government information and databases. Perhaps a useful taxonomy is one that looks at government information as falling within one of four basic modules:

National public reference and federal directory information. This is the basic information about the organization of the Government of Canada, its programs and services, and information indexes and reference systems;

Public documents. These are the basic documents of Canadian democracy such as the records of Parliament, the Statutes of Canada, basic explanations of government programs and services, and information relating to public health, public safety and protection of the environment, among other things;

Research and technical information. Basically, this is the output of government scientific research and technical studies, such as mapping and product testing; and,

Specialized databases, such as those for bankruptcy or corporate names, which underwrite specific programs which have traditionally been underwritten by user fees.

This taxonomy will permit policy options which would start to reconcile the need for fairness and universal access with user fees and use of the private sector as an information provider. The electronic dissemination model being proposed is an extension of the model in place for the dissemination of hard-copy meta-government information under the banner of *Info Source*. It would become a major focal point for the dissemination of government information and locator data to the public on a variety of networks across the country.

The existing *Info Source - Guide to Sources of Federal Government Information* would be expanded to become a comprehensive federal directory and public reference tool, which would be the guts of the locator system. There would be an intelligent natural language interface that would be available via the developing electronic highway. Consideration would have to be given to installing this basic module on the Depository Library System and in government information centres. The components are as described above but would also include the basic organization of the government, a description of services, the government telephone directory, the locator, subject index and natural language thesaurus, access to a catalogue of all government publications, including an ordering mechanism, press releases and speeches relating to government activities and access to other detailed locator systems such as *EnviroSource* at the Department of the Environment. The important point here is that such a system would serve to make the Act a crucial reference point for government institutions dealing with public access to and dissemination of electronic information.

Over the last few years licensing agreements between government agencies and the electronic publishing industry has meant that information that might not otherwise have been made available has been distributed to various service

subscribers. This relatively new Canadian industry is a vital part of the emerging high technology economy in the country. It needs development and already feels at a disadvantage to American competitors because of government reluctance to adjust investment and tax policies in its favour and, also, to make available a wide range of attractive databases without Crown Copyright restrictions (this latter point of view mirrors the United States, where there is no government copyright).

Investment and tax policies are beyond the scope of this study. However, the inventory proposals described above could begin to redress the need of the industry to know what databases are available for licensing. The Information Commissioner has already indicated that he believes that Crown Copyright needs to be reviewed as a possible irritant in blocking wider public access to government information. Others, as well, have raised concerns, particularly in regard to Canadian statutes and court decisions. The case, however, is not totally against Crown Copyright. The unregulated American system can lead to much greater abuses of exclusive contracts to distribute government information at high cost. It is also far from convincing that database information created at considerable expense to the general taxpayer should be available to anyone company or group, which will then market it at a profit, without some return of revenue to the Crown. Other concerns turn around how much value is actually added to databases by the private sector and the accuracy and reliability of the data when this occurs. All this indicates that the issue is a complex one. It probably is possible to remove Crown Copyright and still be able to collect royalties on use of government information, where this is appropriate through contract. The other issues are more complicated. Thus any review of the *Access to Information Act* and surrounding information policy should include an extensive review of whether or not Crown Copyright is still a viable and needed concept.

Easier database licensing is, however, only one side of the coin. Other critics express the fear that traditional systems, such as libraries, which have supported low cost access to public government information will be squeezed within this new private sector arrangement and that the high cost for database access, which is now fairly prevalent in the industry, will constrain the amount of information available to the ordinary citizen. This fear is expressed in terms of creating a society of "information rich and poor", which will further reinforce class divisions and make it virtually impossible to close. The era of the "techno-peasant" may well be on its way to arriving.

The issue has been debated extensively in the United States but is only now being joined in Canada because most database licensing arrangements have either dealt with very specialized information or there have been alternative forms of access (usually printed copies available for purchase or in libraries) to augment the database. This will rapidly change as the federal government moves much more to electronic formats over the next five years.

This is a serious situation which requires policy consideration. Part of the solution may be found in re-examining the concepts of "duty to inform" and "information available for purchase" currently expressed in the *Government Communications Policy*. The first dictum confirms the principle of openness; stating that the government has a clear responsibility to ensure that information about federal policies, programs and services is made available in all regions of Canada. This could include the databases in the first two categories of the taxonomy described above: public reference and directory materials and public documents. Much of this information should be made available free or at the cost of dissemination and where value-added products exist, there should be a public system available to reduce access charges for those unable to afford to subscribe to private database services.

The second dictum recognizes that information which is of interest to specific parts of the Canadian public (as opposed to the general public) should be made available through purchase or user charges (public or private) where there is sufficient demand. Most databases that would qualify for this type of approach fall in to the second two categories of the taxonomy: research and technical information and specialized databases. Pricing in these cases would take into account the preparation, production and dissemination costs or private sector pricing, as appropriate. In some of these cases, the databases would be more directly involved in program delivery (e.g., the bankruptcy register) rather than communication or dissemination of information by the government.

The United States has tried to deal with the dichotomy between wishing to nurture an electronic publishing industry and supporting general low cost access to electronic information for ordinary citizens through legislation. Originally, some members of the U.S. Congress envisioned that the proposed *Government Printing Office (GPO) Electronic Information Access Improvement Bill* would establish a public database system at the GPO, which serve as the access point for ordinary citizens to a wide range of electronic information, at little or no cost, using the American Depository Library System. It was assumed that the information would not be the value-added products available from the private information providers but that government institutions would be required to deposit basic, perhaps even raw, electronic data with the GPO.

The Act actually passed is a good deal less than this, as the electronic publishing industry made its views known and the impracticality of a big database system at the GPO became evident. Indeed, Office of Management and Budget has now sponsored infrastructure legislation which would disband the GPO. What the GPO is now building is a public online system which covers the *Federal Register*, the *Congressional Record*, an electronic directory of federal public information stored electronically; other appropriate documents distributed by the Superintendent of Documents and information in other federal agencies upon their requesting it. This American experience and the principles in the *Communications Policy* may provide some clues to solutions for this thorny issue. First, the criteria underlying the

database taxonomy, described above, could be included in the *Access to Information Act*. Second, government institutions should be required to make available, through their offices, the Depository Library Program or, where appropriate, for home or office access category one and two databases at no more than the cost of dissemination. This would not prevent the electronic publishing industry of developing value-added products, as well, for these databases but it would require government institutions to be very clear about what information falls within the rubric of "duty to inform" and thus should be made available to the public at no or little cost. In this scenario, a citizen should be able to go into a service centre or library and request a copy on diskette of the federal *Fisheries Act* for his or her personal use and receive it at absolutely no more than the cost of dissemination and copying. This would occur even commercial users of the highly indexed considerable connect rates for the service.

The Depository Library System (DSP) is a program of the Treasury Board Secretariat. It has been the safety net for citizens who cannot afford or do not wish to purchase priced government publications, though it attempts to cover all such material, priced or not. There are fifty full depositories across the country and several hundred partial depositories. The system is dominated by the university libraries, which are weaker elements in promoting public access. The program costs the government $16 million annually and the libraries probably put up an equal amount in staff time and space. The Depositories are beginning to receive electronic publications but not really databases. There is a need to study the role of the DSP to determine whether or not it can play a dynamic part in the dissemination of electronic information. Also the DSP does not have a legislative and should have one, either in the *National Library Act* or the *Access to Information Act*.

The following recommendations will help the *Access to Information Act* adjust to and play an important role in the world of electronic information:

Recommendation 14: *Amend the definition of record in sub-section 4(1) of the Act to read "information in records". This serves several ends. It clarifies the notion of relevance and the scope of the requests but, most important, it recognizes the concept of automated information, where records are less easy to isolate than information.*

Recommendation 15: *Amend section 11 of the Act and consequent regulatory power to provide a sensible modern way of charging for electronic information, which form part of an access request. This would have the salutary effect of making government institutions able to*

demonstrate how easy and cheap it is to make information available electronically.

Recommendation 16: *That section 5 of the Act be amended to require government institutions to organize and index their information holdings and compile and maintain in a current state an electronic inventory of these for effective decision-making and to support both active dissemination of useful information to appropriate publics and general accessibility to non-exempted documentation. (All references to accessing manuals currently in the legislation should be wrapped up into this requirement.)*

Recommendation 17: *That section 5 of the Act be further amended to require an automated locator and inventory system maintained by the designated Minister and require that it be built on similar automated inventories (as described above) maintained in government institutions. This locator should be the engine of the Canada Information Network.*

Recommendation 18: *Add a section to the Act which sets out the criteria for the taxonomy of databases and require government institutions to identify all databases in accordance with the taxonomy.*

Recommendation 19: *Add a section to the Act which would place an obligation on government institutions to make accessible in open digital systems that majority of information that is not exempt and assure that any databases falling into categories one and two of the taxonomy are actively disseminated and are made available through public systems mandated by Act or consequent regulation. Institutions should be required to maintain an open database of information already released under the* Access to Information Act.

Recommendation 20: *Consider placing a new provision in the Act, which would set out the criteria to be considered by a government institution, including public interest and pricing or royalties guidance, when contemplating licensing a database to a private sector information provider, and clearly mandate public-private sector partnerships.*

Recommendation 21: *Amend sub-section 71(1) of the Act to require government institutions to incorporate "access reading room" activities in any Info Centre, Business Centre, Single Window or other Service Centre approach, especially as these develop as electronic access points. These should be rationalized with the current access points used by Info Source, as public reference points for government information.*

Recommendation 22: *Provide a legislative direction that federal public reference tools be joined with provincial directories, such as the B.C. Online Freenet Project and should include any electronic versions of major documents released under the Act.*

Recommendation 23: *Advocate a full review of Crown Copyright to determine whether or not it is still relevant in the electronic world and subsequent rapid amendment of the Copyright Act once the review is completed.*

Recommendation 24: *Seek a legislative mandate for the Depository Services Program either in the National Library Act or the* Access to Information Act *after a full review to establish the systems role in the dissemination of public government information in digital formats.*

Lack of attention to adjusting the *Access to Information Act* means that it is out of date as the government and Parliament changes their structures and tilt the balance clearly to doing business electronically. This chapter has outlined a program for substantial reform of the Act, which would serve to modernize it and keep it a vital part of Canadian democracy. The following chapters will deal with more specific amendments, which would further revitalize the legislation.

Chapter 2

EXEMPTIONS AND OTHER THINGS WHICH GO BUMP IN THE NIGHT

After a statement of principle and scope, the exemptions are the most important part of a "freedom of information" statute. The exemptions form a kind of standard as to how open a government is. They should be designed to protect only those very few interests which must, demonstrably, be held secret for the effective operation of a democratic government and those non-governmental interests, such as personal privacy and business trade secrets, which society, in general, holds appropriate to be kept confidential. All other government information should be deemed to be accessible to the public upon query or request.

The current exemptions in the *Access to Information Act* are the result of a careful balancing of all these variety of interests which was undertaken between 1979 and 1982, while the Act was being drafted and debated in Parliament. The exemptions are based on either an "injury test" or "class test". Some exemptions are discretionary while others are mandatory. Exemptions which incorporate an "injury test" take into consideration whether the disclosure of certain information could reasonably be expected to be injurious to a specified interest. Information relating to activities essential to the national interest, the security of persons or their commercial affairs are examples. "Class exemptions" refer to a situation in which a category of records is exempt because it is deemed that an injury could reasonably be expected to arise if they were disclosed. An example of this is information obtained in confidence from the government of a province or one of its institutions.

Discretionary exemptions allow the head of a government institution to decide whether the exemption needs to be invoked. Mandatory exemptions provide no discretion to the head of the government institution and must be invoked.

Thus if a record, or part of a record, comes within a specific exemption, then a government institution will be justified, or in some cases required, to refuse access to all or part of the information sought. The government institution is required to cite, in general terms, the statutory ground for refusing access or what it would be if the record existed. At the present time, the institution is not required to confirm whether a particular record actually exists, since such disclosure may, in and of itself, provide valuable exemptible information. An institution must "sever" exempted portions of records and provide access to the rest.

Discretion and Injury

So much for what exists. Exemptions are difficult creatures to draft and even more difficult to obtain consensus on, thus it is with some trepidation that changes are suggested. Nevertheless, the access exemptions have drawn considerable fire over the years and some amendment is long over due, particularly given the change in the nature of government and the altered international environment after the end of the Cold War. The Standing Committee made only one general recommendation in *Open and Shut* concerning exemptions:

> "That subject to the following specific proposals, each exemption contained in the *Access to Information Act* be redrafted so as to contain an injury test and to be discretionary in nature. Only the exemption in respect of Cabinet records (which is proposed later in this Report) should be relieved of the statutory onus of demonstrating that significant injury to a stated interest would result from disclosure. Otherwise, the government institution may withhold records....only 'if disclosure could reasonably be expected to be significantly injurious' to a stated interest."

At first glance, this appears as a very fair proposal where the object of reform is to promote more open and accountable government. Further investigation, however, uncovers a major problem which must be considered. If section 19, Personal Information, were to be converted into a discretionary, injury-based exemption, the present basis for protection of personal information through the *Privacy Act* would be substantially altered.

As is clearly understood, section 19 is a mandatory, class exemption for the simple reason that it was the drafter's intent to make any public disclosure of personal information subject to the regime of the *Privacy Act*. The section does permit the head of an institution some discretion but this is coincident with the privacy legislation. Admittedly, this is a different approach to that taken in other jurisdictions. In the United States, release of personal information under the *Freedom of Information Act* is subject to a test to determine whether or not disclosure would constitute a "clearly unwarranted invasion of privacy". Ontario combines access and privacy provisions in a single statute and permits disclosure of personal information where there is no "unjustified invasion of personal privacy". British Columbia has a similar structure but its test is an "unreasonable invasion of personal privacy".

It is far from clear that this is a better approach to balancing the protection of privacy with accountable government. To embrace this type of approach, legislation must set out what is and is not an invasion of personal privacy, under whatever test is established. Further, both Ontario and B.C. have seen fit to establish third party notification of individuals when the head of a public body intends to give access to a record that he or she has reason to believe contains

exemptible personal information. While the process is fair, it also appears to be an onerous and bureaucratic process bound to result in time delays. On the whole this type of regime seems to be no improvement over the current federal legislation and may, in fact, weaken existing privacy provisions.

Recommendation 25: *The Information Commissioner should only advocate an unwarranted invasion of privacy test for the release of personal information as has been adoped in Ontario and B.C. if he believes it essential that more personal information needs to be released as a result of ATI requests.*

It should also be pointed out that Ontario and British Columbia have both chosen to protect on a mandatory basis third party trade secrets and confidential business information. It is not clear that a discretionary clause would substantially reduce the protection offered under the section 20 of the federal Act, at least for that information other than trade secrets. With this in mind, it is suggested that all exemptions, with the exception of section 19, paragraph 20(1)a and any new provision dealing with Cabinet Confidences, be discretionary in nature and injury-based.

Recommendation 26: *That all exemptions under the* Access to Information Act *with the exception of section 19, paragraph 20(1)(a), and any new provision dealing with Cabinet Confidences, be discretionary in nature and injury-based.*

There has been comment from time to time that the threshold of the normal injury test in the exemptions should be raised to put an onus on a government institution to demonstrate "significant" injury before information could be refused to a requester. The Committee members took up this cause in *Open and Shut,* though the text of their recommendation 3.1 (see above) seems garbled in this regard. Other jurisdictions such as Ontario and British Columbia have not chosen to strengthen the test beyond "could reasonably be expected to be injurious" to a particular interest, in the same mode as the federal legislation. There is a school of thought that it would be impossible to realistically judge the degree of injury in any situation. It is rather analogous to the argument that a person cannot be a little bit dead; either there is injury or there is not. The discretionary part of the exemption then gives the head the obligation to decide whether or not to live with the consequences of releasing the information. There are better ways to tip the *Access to Information Act* more to openness, which will be set out later in this chapter. Thus, it is suggested that it is not necessary to deal with the degree of injury in any redrafting of the exemption criteria.

Recommendation 27: *That the degree of injury in exemptions not be altered in any reform process.*

Public Interest Override

The Standing Committee also discussed another innovation from the *Ontario Freedom of Information and Protection of Privacy Act,* which was then in draft form. This provision stated that:

> "Despite any other provision of this Act, a head shall, as soon as practical, disclose any record to the public or persons affected if the head has reasonable and probable grounds to believe that it is in the public interest to do so and that the record reveals a grave environmental, health or safety hazard to the public."

Murray Rankin, one of the Committee's expert researchers recently stated that he was particularly taken with this approach which he felt went much beyond the original public interest override for third party business information in subsection 20(6) of the federal Act. Where the federal provision is triggered by an individual request, the Ontario provision is an affirmative duty imposed on the head of an institution to disclose records under specified conditions, despite whatever exemptions may be involved.

It was not noted by the Committee that Ontario went further in section 23 of its Act in providing that an exemption from disclosure of a record under sections 13 (advice), 15 (relations with other governments), 17 (third party), 18 (economic and other interests), 20 (danger to health and safety) and 21 (personal privacy) does not apply where a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption. British Columbia, at Rankin's urging was quick to pick up on the Ontario approach.

British Columbia includes a whole division (4) in its legislation entitled "Public Interest Paramount". This section requires the head of a government institution to disclose to the public; to an affected group of people or to an applicant, without delay, whether or not a request has been made, information:

(a) about a risk of significant harm to the environment or to the health or safety of the public or a group of people, or

(b) the disclosure of which is, for any other reason, clearly in the public interest.

The disclosure is to occur despite any other provision of the *Freedom of Information and Protection of Privacy Act.* There is a notification provision where the head must advise, if practicable, any third party to whom the information relates and the Information and Privacy Commissioner. A substitute procedure permits a notice to be sent to the last known address of the third party if no other

means are practical. British Columbia does not have overrides for specific provisions.

There is no doubt that an effective public interest override would go a long way towards opening up the federal legislation and possibly be much more preferable and practical than adjusting the injury test. Unfortunately, it is not at all clear how a general public interest override would work. Certainly, at the federal level, Ministers have been reluctant to use the public interest override in subsection 20(6) because, if release is in the public interest, they should have released the information before receiving an access request. There is no doubt, however, such a provision would have had an impact, for instance, in the "Tuna Gate" scandal where the Minister appeared to be trying to contain, if not cover up, a problem with the fish plant inspection system to deal with tainted products. It is possible that the British Columbia model places too high an onus on the heads of institutions, since it does not clearly set out the public interests involved and the test to be used.

The Ontario model may be the more realistic approach with its emphasis on health, safety and the environment, especially if it was combined with a complementary provision, which clearly tilted the balance toward openness, by indicating that discretion in applying the exemptions should be toward release not refusal whenever practical. This again would be an easier approach to heightening the injury barrier for refusal. Indeed, it would be possible to extend the public interest at the federal level to include law enforcement, administration of justice and national defence and security. One other final refinement is again with personal information. Ontario does apply the override to this type of record. The federal *Privacy Act* includes a provision for release of personal information in the public interest, with appropriate notification provisions. It would be better to leave this to operate under the current regime, outside the purview of the access act.

Recommendation 28: *Provide a principle statement that indicates that the public interest is paramount where records reveal a grave environmental, health or safety hazard to the public on the model of the Ontario legislation.*

Recommendation 29: *Again following the Ontario model, provide a specific public interest override for section 21 (advice), section 13 (information in confidence from other governments), section 14 (federal-provincial affairs), section 17 (safety of individuals), section 18 (economic interests of government), section 22 (tests and audits), section 23 (solicitor-client privilege), and section 24 (statutory prohibitions). The public interest should be in protection of public health, public safety, the environment, law enforcement, the administration of justice and national defence and security.*

Recommendation 30: *Leave the public interest disclosure mechanism for personal information within the purview of the Privacy Act.*

Recommendation 31: *Extend the public interest override in subsection 20(6) of the Act to cover paragraph 20(1)(a), trade secrets.*

Recommendation 32: *Add a general provision at the beginning of the exemptions part of the Act which obliges heads of institutions to use their discretion in favour of access and openness as opposed to refusal.*

Two Long Standing Irritants

Two other items have been irritants to requesters for some time. Both were raised by the Committee in *Open and Shut*. The first concerns the power to confirm or deny the existence of a record when refusal of access is made. The current provision in section 10 is needlessly wide. It should be narrowed to its intended scope of law enforcement and security and intelligence matters and an admonition made that the provision should be used only when it is strictly necessary.

Recommendation 33: *Section 10 of the Act should be amended so that the power to neither confirm or deny the existence of a record is restricted to records relating to law enforcement and security and intelligence and an admonition made that the provision is to be used only when strictly necessary.*

The second involves the recording of reasons for exempting and excluding information again in section 10. Most institutions provide in the text of the record itself the reason for severing information. Others provide an accompanying document. A few do not provide enough information to connect severed information with an exemption or exclusion. Section 10 should be amended to ensure that the reason for severing specific information is made clear to a requester.

Recommendation 34: *Section 10 of the Act should be amended to ensure that the reason for severing specific information in a record is made clear to a requester.*

Polling

Access to polling and survey information became a "cause célèbre" during the years of the Mulroney government. That government used public opinion research widely and centralized controls over such activity in the Coordinator of Public Opinion Research (CPOR), hosted by the then Department of Supply and Services, but reporting directly to the Chairman of the Cabinet Committee on Communications. This measure split apart the information collection approval function which had resided in Statistics Canada since the "rule of ten" (i.e. approval had to be sought for any collection involving ten or more respondents) policy of the mid-1960s.

Consideration had been given at the drafting stage to putting special provisions regarding polling data in the *Access to Information Act* at the urging of the then NDP leader, Ed Broadbent. The NDP suggestion was to follow the practice used in Ontario of tabling all polls conducted in the Legislature on a six month schedule. The principle underlying such release is the one which still underpins the issue. At their heart, polling and survey data are nothing more than the opinions of citizens about issues. They have been subjected to research analysis but they remain public opinion obtained by a government institution which had the money to fund the research. The Ontario model was rejected in favour of letting the Act apply to each case since it was considered that few, if any exemptions, would cover such records. Some consideration was given to maintaining some public central listing of poll being undertaken or completed but this was never acted upon.

The creation of the CPOR Group gave much more centralized control over polling and public opinion research and, as well, polling projects were fitfully recorded in the Central Registry of Information Collection which was still maintained until last year by Statistics Canada. Growing interest in polling meant that such projects began to attract access requests. At first, the polling data was released fairly routinely because, as had been surmised, no exemptions were found to apply. This caused some consternation among the government's polling experts, particularly as the big issues of Free Trade and Constitutional Reform loomed on the horizon.

These were so-called "sensitive" polls which the government saw as an essential part of its policy making process. A stand was made on various constitutional polls; resulting in the Information Commissioner having to take the Privy Council Office to Court. The government contended that section 14, injury to federal-provincial affairs, could be applied to these polls. The Court stated that it could see instances where some exemptions might apply to polling data but did not find the actual case to be one of them. This has returned the situation to the status quo ante; unless a convincing exemption can be invoked (and these are even scarcer than before) then the polling or survey data must be released in response to a request.

The current government appears to be dismantling the elaborate Conservative mechanisms for controlling polling and may be amenable to establishing some routine release requirements for polling data. Certainly, the government should be encouraged to do so since this would send a clear signal of more "open" government. There are a number of approaches which might be taken. First, since amendment of the *Access to Information Act* may be a protracted process, the government should be asked by the Commissioner to establish a policy that polling and survey data will not be subject to exemptions under the Act and that government institutions maintain a listing of such data in the office of their Access to Information Coordinator which is updated no less frequently than every two months.

In amending the Act, consideration could be given to excluding polling data from its coverage with the obligation on government institutions to routinely account for and disclose this information. This is not a viable option since it removes compliance from review by the Information Commissioner. A second option would be to simply require institutions to release the results of polls in the absence of a request, perhaps under the public interest provision discussed above. A third approach would be to follow the British Columbia model which specifically excludes public opinion polls from the advice and recommendations exemption. This option would, however, still permit an innovative institution to try another exemption and does not further the cause much beyond the current state. Fourth, a new provision could expressly set up a special regime for polling results which would require institutions to publicly list all polling and surveys within two months (60 days) of the project being undertaken and to routinely release the results when requested informally to do so. In the two month period, requests could be refused much like the current section 26, preparing for publication, currently operates. This option has the advantage of giving the institution, which is trying to accomplish some particular policy objective with the poll, some flexibility while also promoting accountability and information disclosure. A final option would be to stay with the status quo, where polling results are simply requested on a case by case basis under the Act.

One last point on polling, the Commissioner should support any efforts to create a public repository for polling data. This would mean that all results would be available for ongoing social and economic research. Queen's University has made such a proposal and, should it re-surface with the current government, the idea should be supported.

Recommendation 35: *The government should be encouraged to issue a policy which states that no exemptions will be applied to results of public opinion research; that a listing of such research, updated no less frequently than each two months (60 days), must be maintained in the office of each institution's Access to Information Coordinator; and that the listing and public opinion*

results must be provided upon informal request by the public.

Recommendation 36: *That the Act be amended to establish a separate regime for public opinion research which would require government institutions to list all such research within two months (60 days) of a project being undertaken and to release the results when requested informally to do so. Within the two month period, requests could be refused much in the same way as section 26, preparing a publication, currently operates.*

Recommendation 37: *That the Information Commissioner advocate and support a public repository for the results of public opinion research, preferably at a Canadian university.*

Section 13: Information Obtained in Confidence from Other Governments

Section 13 of the *Access to Information Act* provides mandatory class protection for records "obtained in confidence" from other governments, foreign, provincial and municipal, as well as, international organizations. The need for such an exemption is undeniable since each government should be generally responsible for controlling and releasing its own information. Indeed, this courtesy needs to be extended to the subdivisions of foreign states (e.g. an American state) and perhaps also to self-governing native bands. The first extension was recommended by the Standing Committee in *Open and Shut.*

Having stated the above, it is fair to also say that both the international and federal-provincial scenes have changed substantially over the last few years. Certainly, with the Clinton administration in the United States, there have been indications that it would like to declassify a large amount of older foreign relations and military information. The Americans might also be supportive of a less onerous "confidence" protection. All this to say that no one has really looked at this area for a long time. It is analogous to the security classification and personnel vetting system, which seemed hopelessly bogged down in international standards and conventions. However, when some intelligent questioning occurred, many of the obstacles turned out to be mythical and there was a fair international consensus for change. All this to say that, while it may be premature to jump into a discretionary, injury test exemption for "information given in confidence" from international organizations and foreign states, it is time that a more thorough study was undertaken of the implications of such a move. It may, in fact, be quite practical.

On the provincial front, no study is necessary. Progressive freedom of information legislation in Ontario and British Columbia already have discretionary exemptions for records relating to "intergovernmental relations" which verge on injury tests (i.e. "could reasonably be expected to reveal a confidence). Any amendment should opt for a discretionary, injury based exemption for provincial, municipal, Indian band, etc. information. A general 15-year rule should apply to all such "confidences" unless the information relates to law enforcement or security and intelligence matters, which are subject to extensive and active international agreements and arrangements which will be very difficult to change. As well, the public interest override should apply to this exemption.

The Committee recommended in *Open and Shut* a complicated appeal procedure, including recourse to the Information Commissioner and the Federal Court, for other governments if they wished to appeal release of information. This seems impractical, if not counter to international protocol. The power of discretion lays with the government institution controlling the information. It should be able to justify refusals, on the one side, and, sort out release mechanisms on the other.

Recommendation 38: *Section 13 of the Act should be amended to include the institutions or governments of components of foreign states and self-governing native bands.*

Recommendation 39: *The Information Commissioner should either request the government to undertake a study or mandate one himself to study the feasibility of making section 13(a) discretionary, injury based exemption in relation to the confidences of international organizations and foreign states.*

Recommendation 40: *Section 13 of the Act should be amended to make it a discretionary, injury-based exemption for provinces, municipalities, self-governing native bands and any other government entities in Canada*

Recommendation 41: *Section 13 of the Act should be incorporated into the public interest override.*

Recommendation 42: *Section 13 of the Act should be amended to have the confidence end 15 years after the date on the record, except for those records relating to law enforcement, and security and intelligence.*

Section 14: Federal-Provincial Affairs

There is a long-standing recommendation, going back to the original drafting of the Act and repeated in *Open and Shut*, that the word "affairs" be replaced by the word "negotiations". This would serve to narrow the exemption without damaging the interest involved. The change should be supported.

The only other amendment would be to make the section subject to a public interest override.

Recommendation 43: *Section 14 of the Act should be amended to replace the word "affairs" with "negotiations".*

Recommendation 44: *Section 14 of the Act should be incorporated into the public interest override.*

Section 15: International Affairs and National Defence

There have been ongoing complaints from requesters as to how the various parts of this complicated exemption are applied. The Standing Committee summed it up best in *Open and Shut*:

> "After a broadly worded injury test, nine classes of information which may be withheld are listed. Arguably, any information found in the broad classes listed, whether or not it would be injurious if released, must be withheld. The Information Commissioner has interpreted this section as requiring the department or agency to establish that the records withheld are not only of the kind or similar in kind to those enumerated in the subsequent paragraphs, but also that the Department must provide some evidence as to the kind of injury that could reasonably be expected if the record in question were released. On the other hand, the Department of Justice has asserted that one of the specific heads in the paragraphs need not be applied to information before the exemption can be claimed, as long as the specific injury test is met."

The Committee worried that as currently interpreted the section was not adequately linking injury to the nine classes or illustrations. The Committee's concern remains valid and we repeat its recommendation here.

Recommendation 45: *That section 15 of the Act be amended to clarify that the classes of information listed are merely illustrations of possible injuries; the overriding issue should remain whether there is an injury to an*

identified state interest which is analogous to those sorts of state interest listed in the exemption.

Section 16: Law Enforcement

The only change contemplated to section 16 of the Act is to alter paragraphs 16(1)(a) and (b) into injury based clauses. This will be very controversial within the law enforcement community but more closely parallels the law enforcement provisions in the Ontario and British Columbia Acts.

Recommendation 46: *Amend section 16 of the Act to introduce an injury test into paragraphs 16(1)(a) and (b).*

Section 17: Safety of Individuals

British Columbia has made a useful modification to the concept of "threats to the safety of individuals", by adding "mental or physical health". This should probably be added to the current wording of section 17. The section should also be made subject to a specific public interest override.

Recommendation 47: *That section 17 of the Act be amended to incorporate the words "mental or physical health" into the threat to an individual's safety.*

Recommendation 48: *That section 17 of the Act be subject to a public interest override.*

Section 18: Economic Interests of Canada

Section 18 deals with a potpourri of issues. It is, however, roughly the government equivalent of section 20, protection for economic and technical information. For this reason, the provision should be amended to parallel section 20 in regard to the release of the results of product and environmental safety. This was recommended by the Standing Committee in *Open and Shut.* As well, the term "substantial value" in paragraph 18(a), relating to trade secrets and financial, commercial, scientific and technical information should be modified and narrowed by the term "monetary". Another issue which has arisen is the problem of protecting "confidential business" information for the government's Special Operating Agencies (SOAs). Several of these are being asked to compete with the private sector without the protection other companies have under section 20, third party information. Adjusting section 18 is infinitely preferable to eliminating SOAs

from coverage of the legislation, which several of them have requested informally. Finally, the whole section should be subject to the public interest override.

Recommendation 49: *Section 18 of the Act should be amended so that it could not be used to withhold the results of product or environmental testing done by the government on its own activities.*

Recommendation 50: *Paragraph 18(a) of the Act should be amended to narrow the term "substantial value", relating to government trade secrets and financial, commercial, scientific and technical information, to "substantial monetary value".*

Recommendation 51: *Section 18 of the Act should adjusted to protect the "confidential business" information of Special Operating Agencies.*

Recommendation 52: *That section 18 be subject to a public interest override.*

Section 19: Personal Information

As discussed above, this report recommends no major changes to section 19, especially the addition of an "unwarranted invasion of privacy" test, since it remains unclear that this type of approach would bring any improvement to the Act and would create a large bureaucratic notification process. Indeed, such changes may be seen as attempting to undermine privacy protection at a time when public concern in this area is at an all time high.

It should be pointed out that the government would undoubtedly attempt to change Section 19 to close the access to personal information through consent of the individual upheld in the "LoveBirds Case". This would involve an amendment to ensure that the head of a government institution is not required to disclose personal information where the requirement set out in paragraph 19(2)(a) or (b) or (c) have been met, so that the *Privacy Act* would continue to set the standard for the disclosure of personal information.

Section 20: Third Party Information

Section 20 of the Act protects certain kinds of information furnished to a government institution by a third party. A third party may be any person, group of persons or organization that is not a government institution for purposes of the

Act. Generally, section 20 protects trade secrets, confidential, financial and technical information; information which, if released, would likely have an adverse impact on a business or interfere with contractual and other negotiations. While section 20 is one of the most used and litigated exemptions under the *Access to Information Act*, it is still a balanced and fair approach to the protection of third party information.

The Standing Committee made several recommendations in *Open and Shut*, which would improve the section while not altering its nature. These should be adopted in any reform process.

Recommendation 53: *That the term "trade secret" should be defined in the* Access to Information Act.

The Committee offers a definition as follows:

> "A secret, commercially valuable plan, process or device, that is used for the making, preparing, compounding or processing of trade commodities and that can be said to be the end product of either innovation or substantial effort."

Recommendation 54: *That the above definition be subjected to legal scrutiny before inclusion in the Act to ensure that it meets the requirements of the strict law in this area.*

Recommendation 55: *That the public interest override currently in subsection 20(6) of the Act be extended to paragraph 20(1)(a), trade secrets.*

Recommendation 56: *That section 20 be amended to allow substitutional service of notification (e.g., by public notice or advertisement) where this is effective, practical and less costly.*

Recommendation 57: *That the Act be amended to clarify that third parties bear the onus of proof before the Federal Court when they challenge decisions to disclose records that may contain confidential business information.*

In addition to the suggestions of the Standing Committee, two other changes merit consideration. The first involves the intervention of third parties to the Federal Court in order to prevent disclosure as set out in section 44. There is no incentive for the third party to proceed to hearing in an expeditious manner and the whole process can be used as a delaying tactic. There should be a provision that requires the third party to seek a hearing within 20 or 30 days.

Recommendation 58: *That the Act be amended to provide in section 44 a time limit (20 or 30 days) by which an intervening third party must seek a hearing before the Federal Court.*

The second point refers again to Indian Bands, which deserve to have their information protected under section 20.

Recommendation 59: *That section 20 of the Act be amended to permit protection of information (i) supplied by Indian bands, band associations and tribal councils recognized by the Department of Indian Affairs, and, (ii) about Indian band trust accounts which are held by government institutions, but not supplied by the band.*

Section 21: Advice and Recommendations

The advice and recommendations exemption ranks with the exclusion of Cabinet Confidences and the fees provisions as one of the most controversial clauses in the *Access to Information Act*. From the early debates on the drafting of the Act, critics have attacked its broad language which would seem to embrace wide swaths of government information. The Standing Committee stated in *Open and Shut* that it was the provision "has the greatest potential for routine misuse". The government seemed to agree; taking pains in policy guidance to admonish caution and to build in the injury test omitted from the legislation.

The question then is what to do to reform section 21? The Standing Committee recommended that the provision be redrafted to contain an injury test, involving candour of the decision-making process as is currently required in the Treasury Board policy manual. The Committee went on to advocate another clarification which would assure that the exemption only applies to policy advice and minutes at the political level of decision-making, not factual information used in the routine decision-making process of government. Finally, the Committee recommended the lowering of the time limitation in the current exemption from 20 to 10 years, which seems an appropriate time to protect material used in a decision-making process. This would not mean that other exemptions might be applied to the record.

This is more than a good start but the reform needs to be taken further. The provision should emulate Ontario and British Columbia, where there is a long list of types of information not covered by the exemption, including factual material, public opinion polls, statistical surveys, economic forecasts, environmental impact statements, reports of internal task forces, and so on. There should also be an attempt to define the term advice in the balanced way currently set out in the policy manual. The provision is also really intended to cover the internal operations of government. Thus the exemption should be limited to advice to and from public

servants, ministerial staff and Ministers. As well, the provision should be made subject to the public interest override. All these changes will serve to more closely define what information needs protection to preserve the necessary decision-making space for government.

Finally, paragraph 21(1)(d) should be amended in regard "plans" not yet brought into effect. This permits the bureaucracy to refuse many personnel and administration plans that were devised and never approved. As is currently the case in the British Columbia legislation, rejected plans should be open to public scrutiny.

Recommendation 60: *That section 21 of the Act be amended to encompass an injury test.*

Recommendation 61: *That section 21 of the Act be clarified as to the type of sensitive decision-making information it covers and include a listing of those type of documents it specifically does not cover.*

Recommendation 62: *That section 21 of the Act be amended to reduce the current time limit on the exemption from 20 to 10 years.*

Recommendation 63: *That section 21 of the Act be amended in order to restrict its application to advice and recommendations exchanged among public servants, ministerial staff and Ministers.*

Recommendation 64: That section 21 of the Act be amended to add a definition of advice, perhaps the balanced definition currently in the Treasury Board policy manual.

Recommendation 65: *Section 21 of the Act be incorporated in the public interest override provision.*

Recommendation 66: *That paragraph 21(1)(d) of the Act be amended to exclude rejected plans from the coverage of the exemption.*

Section 22: Tests and Audits

Recommendation 67: *That section 22 of the Act be incorporated in the specific public override provision.*

Section 23: Solicitor-Client Privilege

There have been many complaints that information that might otherwise be available to an applicant has been refused because it is contained as part of a legal opinion and thus subject to a blanket coverage of solicitor-client privilege. The Standing Committee recommended that a clarification was necessary to restrict the exemption to only those cases where litigation or negotiations are underway or are reasonably foreseeable. This is worth considering though its application may be difficult. It has also been suggested that the provision could be amended so that, to facilitate disclosure, the privilege is waived in respect of part of the protected records, without prejudicing the application of privilege to the balance of the records.

Recommendation 68: *That amendment be considered for section 23 that either clarifies that the exemption will only be used in cases where litigation or negotiations are underway or are reasonably foreseeable, or alternatively, permits the waiving of solicitor-client privilege for a portion of the requested records, without prejudicing the claim for the other portion.*

Recommendation 69: *That section 23 of the Act be incorporated in the specific public interest override.*

Section 24: Statutory Prohibitions

There is a problem with the increasing number of statutory prohibitions against disclosure under the *Access to Information Act*. There is a need to dramatically and effectively intervene to restrict the growing use of such clauses in other statutes. There would appear to be a number of options.

One way would be to simply adopt the report of the Standing Committee in *Open and Shut* and roll back most of the prohibitions against disclosure. This would require an order to the Department of Justice to review all the Acts, including those recently added, and prepare a report and legislative package.

Another option would be to stipulate those Acts which mandate the heads of institutions not only require refusal but also mandate release. Because these are specific statutes, they sometimes mandate that more information be released than under the *Access to Information Act*. Section 24 could be reconfigured along the lines of section 19, personal information, to oblige heads of institutions to refuse to disclose information restricted by other statutes, but require release where the other statutes requires it. Release would have to be in accordance with the provision of the other statute. This has the advantage of regularizing the *Access to*

Information Act with release conditions in other statutes. Whichever option is selected, section 24 should be subject to the specific public interest override.

Recommendation 70: *That the review of statutes under section 24 undertaken by the Standing Committee be immediately reviewed by the Department of Justice and a public report issued as to which statutes are being summarilarly removed from the list and suggestions made as to how section 24 will be reformed to prevent it becoming a loophole around the* Access to Information Act. *The Commissioner should suggest to the Minister of Justice that this is a small but very tangible step toward open and accountable government.*

Recommendation 71: *Section 24 should be made subject to the specific public interest override provision.*

Section 25: Severance

Severance is an essential process for ensuring that applicants under the Act receive as much information, as possible, about their chosen subject. Generally, the process of excising exemptible information for releasable information works well, though there are still complaints about the workload it imposes. Section 25 could, however, be improved by two technical amendments.

Recommendation 72: *That section 25 be clarified to reinforce the principle that severance applies not only to records, a part of which could be protected by a discretionary exemption, but also to records where part is protected by a mandatory exemption.*

Recommendation 73: *That section 25 of the Act be amended to indicate that access is to "information" and not to "records". This would aid access to computer-based information and perhaps to resolve the debate over relevance where information pertinent to a request is mixed up with information not involved with the subject.*

Section 26: Information to be Published

Recommendation 74: *That section 26 of the Act be amended to reduce the time involved in printing a document from 90 days to*

60 days. This is ample time given modern printing methods and would further reduce time delays.

Possible New Exemption

The British Columbia legislation sets out an exemption for information the disclosure of which could reasonably be expected to result in damage to or interfere with natural and human heritage sites (section 19). There has been some concern at the federal level over the release of information that might endanger endangered species. Thus it might be prudent to include a provision similar to British Columbia's in the Act.

Recommendation 75: *That the Act be amended to include an exemption dealing with information the disclosure of which could be harmful to the conservation of endangered species or heritage sites.*

Chapter 3

ALADDIN'S LAMP OR OLD CONFIDENCES FOR NEW

As stated in Chapter 1 of this report, no single action brought as much disrepute on the *Access to Information Act* than the decision to exclude Confidences of the Queen's Privy Council for Canada from the legislation's coverage. It was then Prime Minister Trudeau's price for proceeding with the access bill. Dubbed the "Mack Truck" clause, the exclusion of Confidences was immediately seen by the media as the primary reason for the new Act being ineffective. They forgot that the Confidences exemption that had been drafted was a tight mandatory provision that would have provided slim pickings for applicants. Nevertheless, a symbol of secrecy had been created. Three years later little had changed. The Standing Committee claimed that it received more briefs and comments on section 69, the Confidences provision, than on any other part of the legislation. Truly a symbol had been born.

The exclusion in section 69 covers a wide variety of documentation from memoranda to Cabinet; discussion papers; Cabinet agenda; communications between Ministers on Cabinet business; briefing material; and draft legislation and Orders in Council. Cabinet Confidences are excluded from the Act for a period of 20 years, thus creating a trade in Confidences of previous governments while the current one is left in peace. The special nature of Cabinet Confidences is eloquently put in the Treasury Board policy manual concerning access to information and privacy:

> "The Canadian government is based on a Cabinet system. Thus, responsibility rests not in a single individual but on a committee of Ministers sitting in Cabinet. As a result, the collective decision-making process has traditionally been protected by the rule of confidentiality. This rule protects the principle of collective responsibility of Ministers by enabling them to support government decisions, whatever their personal views. The rule also enables Ministers to engage in full and frank discussions necessary for the effective functioning of a Cabinet system of government."

All this is well and good, but does it merit exclusion of Cabinet Confidences from the scope of the legislation? The Standing Committee thought not. Having reviewed the various reasons for "Cabinet confidentiality" and found ample reason to justify it, the Members went on to state in *Open and Shut*:

> "Nevertheless, the Committee does not believe that the background materials containing factual information submitted to cabinet should enjoy blanket exclusion from the ambit of the Acts. It is vital that subjective policy advice be severed from factual material found in Cabinet memoranda...(But) factual material should generally be available under the Act - unless, of course, it might otherwise be withheld under an exemption in the legislation."

The Committee found support in the Williams Commission on Freedom of Information and Privacy in Ontario which recommended that Cabinet records be dealt with as a mandatory exemption and not as an exclusion. This was adopted in the Ontario *Freedom of Information and Protection of Privacy Act* and emulated in other provincial legislation, especially in British Columbia. The latter jurisdiction went on to adopt a 15-year rule for moving Cabinet documents out of the mandatory exemption and to exclude from the provision

> information in a record of decision made by the Executive Council or any of its committees on appeal under an Act; or,
>
> information in a record the purpose of which is to present background explanations or analysis to the Executive Council or any of its committees for its consideration in making a decision if: (i) the decision has been made public, (ii) the decision has been implemented, or (iii) 5 years or more have passed since the decision was made or considered.

The last part of the B.C. provision is built on the now defunct Discussion Papers clause in paragraph 69(3)(b) of the federal Act, which established criteria for releasing this type of Cabinet document. It is also analogous to the Mulroney government's decision to lift the veil of Cabinet secrecy somewhat by allowing the Auditor General access to the analysis portions of memoranda to Cabinet after Kenneth Dye took the government to Court over documents relating to the purchase of PetroFina Ltd. in order to test the access to information provisions of the *Auditor General's Act*.

Any reform of the *Access to Information Act* will have to address the "symbol of secrecy" - Cabinet Confidences. Building on the Committee deliberations in *Open and Shut*, the following recommendations are made:

Recommendation 76: *Section 69 of the Act should be amended to convert it into a mandatory, class exemption.*

Recommendation 77: *The current twenty-year exemption covering the exclusion of Cabinet documents from the Act should be converted into a fifteen-year rule as to when documents fall outside the mandatory, class*

exemption for Cabinet Confidences and may only be exempted under some other provision (e.g., law enforcement or national security). The period of fifteen years was arrived at by the Committee as the maximum duration of three Parliaments. This seems reasonable and has been adopted by British Columbia.

Recommendation 78: *That paragraph 69(3)b be redrafted to cover analysis portions of Memoranda to Cabinet now made available to the Auditor General and these be made releasable if a decision has been made public, the decision has been implemented, or five years have passed since the decision was made or considered.*

Recommendation 79: *That appeals of decisions under the Cabinet records exemption should be heard by the Associate Chief Justice of the Federal Court after review by the Information Commissioner.*

The Standing Committee hoped to make the Cabinet Confidence exemption more palatable to the government by restricting the appeal mechanism solely to the Associate Chief Justice of the Federal Court. It is agreed that consistency and due consideration should underpin decisions whether or not to disclose Cabinet Confidences. This is much more likely to come from the Information Commissioner, with an office dealing daily with the Act and the precedents derived from it. It is agreed, however, that the appeal mechanism to the courts should be to a senior judge.

Chapter 4

OMBUDSMEN AND QUASI-JUDICIAL POTENTATES: WHITHER THE ROLE OF THE INFORMATION COMMISSIONER

There has developed in Canada two distinct models for an Information Commissioner. The first is the federal model where the Commissioner has ombudsman-like powers. The federal Commissioner has very strong investigative authority, but makes recommendations as to how to resolve differences over refusals of access. Appeal from the Commissioner to the Federal Court, while not encouraged, is a reasonably straight-forward process.

The second might be called the provincial model. This establishes a Commissioner with broad investigative authority and the power to issue binding orders. There is the possibility of a negotiated settlement, but it is overshadowed by the Commissioner's quasi-judicial presence. Further appeal to the Courts is much more difficult and would normally occur as a result of alleged procedural irregularities rather than the substantive questions of refusal of access.

The field of complaint and investigation is roughly the same: problems of access, fees, time extensions, difficulties with the publications required under the legislation, and general matters relating to obtaining access. The British Columbia legislation goes on to give some other powers: to conduct investigations and audits to ensure compliance with the Act, to inform the public about the Act, to receive comments from the public about the administration of the Act, to engage or commission research in the field of the Act, to comment on the implications of legislative on access to information, and to bring to the attention of the head of a public body any failure to meet prescribed standards for fulfilling the duty to assist applicants.

The federal and provincial models continue to diverge on the scope of the respective offices. At the provincial level administration of the freedom of information and privacy provisions are combined under one Commissioner. At the federal level, there are two distinct offices; the Office of the Information Commissioner and the Office of the Privacy Commissioner. The federal *Budget of 1992* proposed the combining of the two federal offices, largely as a cost cutting measure. This was not followed through, however, and will not probably be an issue until the two offices are vacant, after the terms of the present Commissioners have expired. It should be remembered that the Standing Committee made a very firm recommendation that the mandates of the two Commissioners should be kept quite separate.

There is also not much likelihood that the federal government will move away from the general ombudsman approach to resolving access issues. Alternate dispute resolution concepts are now very popular in a new age of cooperation and collegiality. This will not be popular, however, with critics, who, despite discovering some warts on the process evolved by the order issuing Commissioners, remain reasonably enamoured of the provincial model, unless some adjustments can be made to the federal Commissioner's powers. Indeed, it is fair to say that the powers for dealing with findings and recommendations in section 37 of the Act are limited and sometimes lead to rigid findings which do not really reflect the Commissioner's role in resolving disputes and getting information out to the public.

One approach might be to split the powers of the Commissioner into some separate streams. This was the approach of the Standing Committee in *Open and Shut,* where there were recommendations to give the Information Commissioner audit powers on government compliance with access requirements and authority to make binding orders on fee waivers. This could be done in the following way.

On the purely administrative side, the Commissioner could be given authority to issue binding orders in regard to fees and fee waiver issues, time extensions, language of access, and issues around the publications. The Commissioner could be given the power to carry out investigations regarding institutional compliance with the provisions of the Act, including new provisions relating to inventorying, indexing and disseminating information and any alleged failure by an institution to meet the prescribed standards for fulfilling the duty to assist applicants, including delays. These investigations would be public documents provided to Parliament, the institution and the designated Minister, in which the Commissioner would make recommendations on the subjects involved.

In addition, institutions would be required to consult the Information Commissioner on any project to licence or otherwise remove from the public domain federal government information sources and receive the Commissioner's recommendations regarding such proposals. This process would work much like the "Data Matching Policy" under the *Privacy Act*. All these investigations and reports should be made public by the Information Commissioner through a database accessed through the *Canada Information Network*, mandated through a reformed *Access to Information Act*. The complaints regarding refusal of access would be dealt with exactly as they are at the present time. This new approach would not basically violate the Commissioner's role as an ombudsman while more closely meeting the new concern in the public sector for better accountability by government institutions.

Recommendation 80: *That section 37 and other appropriate parts of the Act be amended to redefine the Commissioner's power and role as described in the above two paragraphs.*

Recommendation 81: *That the Commissioner establish a database of reports, investigations, rulings and other public documentation which will be available through the Canada Information Network.*

The Standing Committee raised the question of a public education mandate for the Commissioner. This should be recognized in legislation, along with a mandate to engage in or commission research into access issues, as set out in the British Columbia legislation. This leads to another needed power - the requirement to comment on the implications for access to information of proposed legislative schemes or programs of public bodies.

Recommendation 82: *That the Act be amended to give the Commissioner mandates for public education, to engage in or commission research into access issues and power to comment on the implications for access to information of proposed legislative schemes or programs of public bodies.*

Frivolous or Vexatious Requests

There remains the troublesome issue of dealing with frivolous or vexatious requests. Of course, some institutions would view all access requests in this vein. The reality is, however, that many freedom of information acts attempt to deal with the situation where an individual or group decides to use the legislation, not to exercise "information rights", but rather to obstruct the business of government. The most recent attempt in this regard is British Columbia which includes a provision that the "If the head of a public body asks, the Commissioner may authorize the public body to disregard requests.... that, because of their repetitious or systematic nature, would unreasonably interfere with the operations of the public body."

Two important elements emerge in this provision. First, the head of an institution must request relief and the Commissioner then rules. Given the important right being abbreviated, it would be preferable to let any cessation order be appealed to the Federal Court. The order would stand, however, until the Court made a ruling which negated it. This would seem to be an appropriate way to deal with a difficult issue. Another way to deal with the situation is to permit the head of an institution to cease to respond to requests of a similar nature to the above, subject to appeal to the Information Commissioner and the Federal Court. This solution, however, might be open to more charges of abuse.

Recommendation 83: *That the Act be amended to permit the head of a government institution to request from the Information*

Commissioner an order to cease to respond to access requests that, because of their repetitious or systematic nature, would unreasonably interfere with the operations of the institution. The Commissioner would only issue an order after an immediate investigation of the situation and this order would be reviewable by the Federal Court.

Technical Items

There are a number of technical items relating to the Commissioner and the Courts that have been raised over the years which could be dealt with in any amendment to the *Access to Information Act*.

Recommendation 84: *That sections 49 and 50 of the Act be amended so as to provide a single de novo standard of review.*

Recommendation 85: *That the Act be clarified to explicitly establish the Federal Court's general jurisdiction to substitute its judgement for that of the government institution in interpreting the scope of all exemptions.*

To address the concern that information passing between the institution and the Office of the Information Commissioner is not protected there may be the need to amend section 35.

Recommendation 86: *That section 35 of the Act be amended to make it clear that representation made by one party during the private investigation of a complaint by the Commissioner are not accessible by the other parties to the complaint through another access request. There is a similar need to protect information which has been prepared during the litigation stage.*

There has also been concern over delays of appeals going to the Federal Court. It is understood that these are being addressed by new court rules developed under the auspices of the Information Commissioner. For that reason, no recommendation is made in regard to that issue.

Chapter 5

WHERE LIES THE KINGDOM OF ACCESS?
THE QUESTION OF APPLICATION AND SCOPE

From the period of first debate over the *Access to Information Act*, there was criticism over what government institutions would be covered by the legislation. The saw-off for the original Act was all departments, ministries of state, organizations treated like departments (e.g. the National Archives of Canada) and non-competitive Crown Corporations. The institutions actually covered by the Act are set out in a customized schedule attached to the legislation. The critics charged that all Crown Corporations, especially agencies such as the CBC, Canadian National Railways, Air Canada and PetroCanada, should be covered precisely because they were arms length from government and needed to be held more accountable for their actions and for the public money they spent.

The Standing Committee took up this refrain in *Open and Shut*. The Members were attracted by the Ontario Commission on Freedom of Information and Individual Privacy (the Williams Commission) which had recommended that freedom of information legislation should apply "to those public institutions normally perceived by the public to be part of the institutional machinery of the government." The question, of course, is where to draw the line along the vague concept of "normally perceived" but the Committee did take a crack at it, setting out two criteria. First, if a public institution is exclusively financed out of the Consolidated Revenue Fund, it should be covered. Second, for institutions not financed exclusively in this way, but able to raise funds through public borrowing, the major determinant should be the degree of government control.

The Committee then went on to argue that all Crown Corporations and wholly-owned subsidiaries should be covered. It exempted not wholly-owned subsidiaries and mixed ventures because these organizations are not controlled by a majority of public funds. As practical justification for this stance, it was pointed out that in March, 1986, the Government of Ontario expanded its freedom of information legislation to cover its Crown Corporations. Ontario has since been joined by other provinces which have undertaken a similar coverage. The only exception granted was the program material of the CBC, which it was agreed should not be subject to access legislation. The Committee also recommended coverage of Parliament and its institutions and agents but did not recommend that the offices of

Senators and Members of Parliament be subject to an obligation to disclose information.

Well, where does this leave us in 1994? On one side, after the large number of privatizations of the late 1980s, there are certainly far less Crown Corporations to be covered by access legislation. On the other, there is a new type of structure called a Special Operating Agency (SOA), which did not exist when the Act came into force. These SOAs are parts of departments which have been selected as service agencies. They have a lot of the normal bureaucratic rules removed from their operations and are instructed to focus on their clients, compete, where necessary with the private sector, and try to be self-sustaining, if not, make a profit on their operations. They are designed to improve service to the public and cut the costs of government. SOAs are, however, still a full part of government, meeting the Standing Committee's criteria, and one of the bureaucratic impediments that should not be lifted from them is the *Access to Information Act*.

This throws us back on the original recommendations of the Standing Committee.

Recommendation 87: *That all federal government institutions, including Special Operating Agencies and Crown Corporations, be covered by the* Access to Information Act *unless Parliament chooses to exclude an entity in explicit terms.*

This recommendation has the advantage of inclusiveness. It makes it much more difficult for Ministers and bureaucrats to except an institution from coverage simply by not putting a provision in a governing piece of legislation or failing to pass the requisite Order in Council. Parliament has to make a specific decision to exclude a body. Its disadvantage is that no schedule or list is required. Such an instrument is necessary to inform the public which institutions are actually covered by the Act.

Recommendation 88: *That the Department of Justice be instructed to create, maintain and make generally available to the public an up-to-date list of those institutions covered by the* Access to Information Act.

Recommendation 89: *That special provision be made to exclude from the coverage of the* Access to Information Act *all program materials of the CBC.*

Recommendation 90: *That Parliament be asked to include in amended legislation coverage of the Senate, the House of*

Commons, the Library of Parliament and all parliamentary agent bodies, but excluding the offices of Senators and Members of Parliament.

Recommendation 91: *That special provisions for determination of complaints and appeal be included in the* Access to Information Act *to enable the Office of the Information Commissioner to be covered by the legislation.*

Recommendation 92: *That where the federal government controls a public institution by means of a power of appointment over the majority of the members of the agency's governing body or committee, then the* Access to Information Act *should apply to it.*

Recommendation 93: *That provision be made in the* Access to Information Act *for the removal from the official schedule maintained by the Department of Justice of institutions which are defunct or for some other reason are no longer subject to the legislation.*

At present, the *Access to Information Act* does not really have a scope section. The British Columbia legislation has included a scope section which combines some of the federal section 3, interpretation and section 68, exclusions to the legislation. The section reads as follows:

"This Act applies to all records in the custody or under the control of a public body, including court administration records, but does not apply to the following:

(a) a record in a court file, a record of a judge of the Court of Appeal, Supreme Court or provincial Court, a record of a master of the Supreme Court, a record of a justice of the peace, a judicial administration record or a record relating to support services provided to the judges of those courts;

(b) a personal note, communication or draft decision of a person who is acting in a judicial or quasi-judicial capacity;

(c) a record that is created by or is in the custody of an officer of the Legislature and that relates to the exercise of that officer's functions under an Act;

(d) a record of a question that is to be used in an examination or test;

(d^1) a record containing teaching materials or research materials or research information of employees of a post-secondary educational body;

(e) material placed in the British Columbia Archives and records Service by or for a person or agency other than a public body;

(f) material placed in the archives of a public body by or for a person or agency other than the public body;

(g) a record relating to a prosecution if all proceedings in respect of the prosecution have not been completed;

(h) a record of an elected official of a local public body that is not in the custody or control of the local public body.

(2) This Act does not limit the information available by law to a party to a proceeding."

Such a statement should set out the breadth of the coverage of the Act; that it was basically governing how Canadians obtained access to all government information, with a few limited exclusions. Presumably, examples of exclusions would be:

> personal notes, communications, and draft decisions of a person acting in a judicial or quasi-judicial capacity, including perhaps notes of military court martials;
>
> information from the Commissioner for Federal Judicial Affairs, or any record relating to judges wherever it may be located (This would be a controversial exclusion since, as is well known, there have been attempts to obtain information about judges through the Department of Justice. The decision would turn on the arguments and balance of the case to protect judges in their independent state);
>
> ministerial records, that is non-departmental records of a Minister's office. This is the approach taken in Australia and New Zealand and would incorporate the definition of such records in the *National Archives Act.*

Published material would no longer be excluded from the coverage of the legislation but the other materials in section 68 would still fall in the excluded category.

Recommendation 94: *That the Act be amended to include a statement of scope at its beginning on the British Columbia model which clearly sets out what is and what is not subject to the* Access to Information Act.

Chapter 6

A TECHNICIAN'S DELIGHT: ADMINISTRATION AND FEES

The Standing Committee made a bevy of recommendations relating to the administration of the *Access to Information Act*, many of which have been put into effect by regulation and policy. A few are outstanding and some of these merit consideration. As well, a small number of other technical issues have surfaced which need to be addressed. The following recommendations do this.

Recommendation 95: *Section 6 of the Act, request for access to a record, should be amended to refer to "information in records" to bring it in line with similar amendments and aid in solving the problem of relevance in relation to requests that uncover documents of a mixed nature.*

Recommendation 96: *Section 8 of the Act, transferring requests, should be amended to provide that where a request is not transferred by the recipient institution to the institution of greater interest in what is sought, the recipient institution must give the institution of greater interest reasonable notice of its intention to disclose unless; (i) the recipient institution has already consulted the institution of greater interest on the particular request; or, (ii) there is an agreement between the two institutions waiving such notice.*

Delays

The Committee was concerned about time delays both in institutions and the Commissioner's Office. The latter issue has been addressed, in a variety of ways by the Commissioner and the situation has improved. Thus, there seems to be no merit in imposing the sixty-day rule suggested in the *Report* on investigations of the Information Commissioner. Delay in institutions remains a problem. Unfortunately, little that is suggested in *Open and Shut* is likely to ameliorate the situation. Lowering time limits in a period of severe resource restraint will only cause performance statistics to plummet. Declaring that an institution cannot collect fees when they are late will have a negligible effect when so few fees are collected. Institutions do generally try to do their best in processing requests and exhortations from the designated minister usually brings some limited results. There are, however, some chronic laggards and the suggestion of giving the Commissioner specific powers to investigate in this area and to report to the Minister involved,

publicly to Parliament and to the designated Minister on the offenders (see chapter 4) does seem to be the best approach available.

In order to make this type of approach effective, a provision should be included, similar to the British Columbia legislation, which imposes a duty on the head of a government institution to "make every reasonable effort to assist applicants and to respond without delay to each applicant openly, accurately and completely". This establishes a standard against which the Information Commissioner can make a judgement. In addition, it would be possible to restrict delegation to extend time limits to a reasonably senior level (perhaps Assistant Deputy Minister) in cases where time extensions are required. This would serve to highlight the accountability for the decision and the performance required.

Recommendation 97: *That a new provision be added to the Act which imposes on the head of a government institution the "duty to assist applicants".*

Recommendation 98: *That section 9 of the Act, extension of time limits, be amended to restrict the delegation of granting time extensions to a senior official, perhaps Assistant Deputy Minister level, with the hopes of increasing the accountability for performance by institutions.*

It should be noted that the government will likely wish to add to the conditions under which an institution can seek a time extension. The conditions will turn around heavy workload and would probably cast as trying to obtain an agreement between an institution and the requester or declaring it would be unreasonable for the department to meet the deadline because of the number of requests it has to process. The revision is aimed at problems in a few institutions such as National Revenue, which have be inundated with requests from time to time. The addition of conditions for time extensions should be approached with caution. It may be better to attack this problem through new categories in the fees provisions which permit requests of a commercial nature to be treated differently than to amend section 9.

The Standing Committee was concerned that Access Coordinators be recognized in the *Access to Information Act* because of their critical role in the access regime. The job of Access Coordinator, while still difficult, is now better integrated into the public service and it is not necessary to recognize it in legislation. If the basis of the legislation is broadened as recommended in this report, the Act impinges on a wide range of service officials beyond the Coordinators, including informatics and information management personnel, librarians, and a wide range of program managers.

Fees

We now come to the difficult and controversial question of fees. It may be best to start this section with a couple of principles. First, anyone seeking information for the purpose of holding the government accountable or for their own personal interest should pay minimal fees for obtaining the information, if they make a reasonable and specific request (i.e. not "give me everything you have on NAFTA"). Second, the Act is used by those who seek information of great interest and in reasonable bulk for resale purposes. In these cases, the government should be entitled to either direct the individual or company to another stream for negotiating a licensing agreement or some other arrangement for providing the information or be charged something close to the actual cost of production of the information. If the former route is chosen those arrangements would be subject to the information dissemination criteria set out in the act and reviewable by the Information Commissioner.

The Standing Committee made several recommendations regarding fees. The first was that the application fee should be rescinded. Certainly, no other Canadian jurisdiction requires an application fee but no other also provides five free hours of service (British Columbia provides three hours to locate and retrieve the record). In tough fiscal times, it may be very difficult to rescind the application fee and, indeed, even more difficult to stop it from being raised. The committee also wished to preserve the five hours free service. This might form the basis of a trade-off.

Recommendation 99: *That the strategy on an application fee should be to have it rescinded but if this is not possible then an application fee should buy the current five hours of free service for non-commercial requests. A reasonable compromise might be a $15.00 application fee, which buys the five free hours and fifty pages of photocopying or some other appropriate amount of other copies.*

The Committee also recommended that no fees be payable if a search did not reveal any records. While this seems reasonable, at first glance, much work is often expended in a fruitless search which cannot be conducted at no cost. Institutions have acted fairly responsibly in this type of situation and, since no other jurisdiction has seen fit to include this type of provision, it does not seem to merit inclusion in a reformed Act.

Another, recommendation in *Open and Shut* was that the fees regulations be adjusted to stipulate a market rate for photocopying. The comment in the Report is symptomatic of a general need to adjust the regulation making power in section 77 of the *Access to Information Act* to reflect constantly adjusting rate structures, especially for computer systems; new media such as diskettes, CD-ROMs and

video; and alterative formats for the handicapped. As well, with virtually no adjustment in fees since 1982, there is a need to bring rates and labour costs into line with current levels.

Recommendation 100: *That the regulatory making powers in section 77 of the Act be revised to enable them to reflect reasonableness in pricing and new, cheaper formats for presenting information and rates and labour costs adjusted to reflect current levels.*

If the above adjustments were made, the ordinary requester could be left with roughly the same structuring of fees as now exists. Currently, the average fee for a request, including the application fee, ranges just above $12.00. This would rise a few dollars but still would be very reasonable amount. The change would be for commercial requests. The Act could have criteria upon which to determine whether or not a request was considered to fall within the commercial category. These could turn around the nature of the information being sought and the extent that it contributed to government accountability or was of purely personal interest to the requester or the disclosure was in the public interest.

When a request was deemed commercial by an institution, the requester would be informed of the alternatives: either go forward with a licensing agreement or another arrangement for gaining access to the information or proceed with processing of the request under a fee system which would pass on much more of the actual costs, including review time and shipping charges, and would provide for no free period or copies. An estimate of costs would be provided and a deposit required, except where the cost was less than $150.00, when full payment would be required. The decision of the institution would be appealable to the Information Commissioner and the clock would stop on the request until such time as the requester agreed on the method of proceeding. This type of commercial request would not apply to the media or even a company seeking information on a competitor. It is designed to deal with the information broker that makes a large number of requests for large amounts of information which is then sold.

Recommendation 101: *That section 11 of the Act be amended to include criteria for deciding when a request is commercial in nature and provision made for procedures for dealing with such requests, including alternative processing, with the requirement for review by the Information Commissioner; special fee structures more reflective of actual costs; an estimate of costs; payment of a deposit and regulatory power to set detailed rates and procedures.*

The Standing Committee also made an extensive recommendation for the inclusion of fee waivers in the Act. Both Ontario and British Columbia have dealt with fee

waiver specifically in their legislation. The Committee criteria are basically all right. They suggest consideration of whether:

> there will be a benefit to a population group of some size, which is distinct from the benefit of the applicant;
>
> there can be an objectively reasonable judgement by the applicant as to the academic or public policy value of the particular subject of the research in question;
>
> the information released meaningfully contributes to public development or understanding of the subject at issue;
>
> the information has already been made public, either in a reading room or by means of publication;
>
> the applicant can make some showing that the research effort is likely to be disseminated to the public and that the applicant has the qualifications and ability to disseminate the information. The mere representation that someone is a researcher or 'plans to write a book' should be insufficient to meet this later criterion.

The *Government Communications Policy* sets out more utilitarian waiver criteria:

"Institutions should reduce or waive fees and charges to users where there is a clear duty to inform the public, i.e. when the information:

> is needed by individuals to make use of a service or program for which they may be eligible;
>
> is required for public understanding of a major new priority, law, policy, program, or service;
>
> explains the rights, entitlements and obligations of individuals;
>
> informs the public about dangers to health, safety or the environment....

The Ontario legislation adds a wrinkle of "whether the payment will cause a financial hardship for the person requesting the record".

All this to say that what appeared novel and difficult to prescribe in law in 1987 is now fairly run of the mill and deserves to be considered in any reform of the *Access to Information Act*.

Recommendation 102: *That fee waiver criteria based generally on the text in* Open and Shut *be incorporated in any amendment of the Act.*

In connection with fee waivers, it is also suggested that the Information Commissioner have the power of making binding orders in this area. This is part of the new powers suggested for the Commissioner in Chapter 4.

Recommendation 103: *That the Information Commissioner be given the power to make binding orders in regard to fee waiver decisions.*

Finally, there is some feeling that performance of institutions under the Act would improve if they were able to retain the fees paid to them rather than depositing them in the Consolidated Revenue Fund. It must be said that this is a very small amount of money for most institutions and would remain so even if they were more diligent in collecting fees. For some, however, such as Revenue Canada, a change might help to offset the costs of the access shop. There is a danger that institutions might see access fees as a new source of revenue and become quite ruthless in charging. The fee structure does make making large dollars reasonable difficult, however, and, along with charging, comes the demand from clients for improved performance. To a limited extent then, such a measure would support some of the performance goals in regard to meeting time deadlines.

Recommendation 104: *That the Act be amended to permit institutions to enter into an agreement with the Treasury Board to retain all or part of the fees they collect and apply them to improving the access program.*

Method of Access

Section 12 of the *Access to Information Act* needs to be modernized to permit accessing and charging for other formats in which information is now presented. As well, it should read "access to information in records".

Recommendation 105: *That section 12 of the Act be modernized to permit access and charging mechanisms for information in other than traditional formats (including alternative formats for the handicapped) and also be amended to read "access to information in record".*

Conclusion - Part 1

INFORMATION ARISTOCRACY OR DIGITAL DEMOCRACY

Open and accessible government is an essential part of an effective democracy and critical in an knowledge-based society and economy. The *Access to Information Act* is entering its eleventh year of existence. In its infancy, it was a bold step to change the process of government in Canada. That it has only partially met the expectations of its critics is not surprising or alarming. The United States, which is approaching thirty years of experimentation with Freedom of Information legislation, has not solved many of the difficult issues that Canadian commentators would see done in the "snap of the fingers". What is troublesome, however, is that the Americans see their legislation growing and continuously supporting their democracy. That spirt and intent is missing in this country. It seems that Parliament has indulged itself in a "collective amnesia" about information rights while the bureaucrats have given scrupulous lip-service to the letter of the law but little inspired leadership for open, accessible and reponsive government.

Will the situation change? Only if there is a ground-swell of popular agitation to modernize the Act and make it effective in the face of the information revolution that is seizing the modern world. The present Act did not magically occur. It was the result of a broad coalition of interests which pressed Parliament and the government of the day for change. There is a need to rediscover that coalition for open government and the enlightened reform of Canadian information law and policy. The need for a "public interest" lobby was never more pressing; the stakes never greater for we stand on the brink of deciding, as the *Economist* has put it, whether we will have an information aristocracy or a digital democracy.

This paper provides a specific agenda for the change and reform of the *Access to Information Act*. The Recommendations, which are summarized below, present a thorough-going review of the legislation which will both protect and enhance the current "right to know" enshrined in the legislation and modernize the Act so that it can play an important, preeminent role in helping Canadian democracy adjust to the mores of the Information Age. A major argument today is that we, as a country, cannot afford meaningful reform in any sphere. This paper has not dealt with costs. Suffice it to say that the current *Access to Information Act* costs taxpayers about $20 million per year. Nothing that is suggested here would increase that amount and the suggestions to better organize government information holdings and disseminate them electronically to the public would actually reduce costs in departments. This does not factor in the effect that information may have on the Canadian economy and the influence it would have in reversing the cynical view of government shared by many citizens. In short, costs are not a factor. It is a time for action. The challenge is considerable but failure to meet it will leave public

information policy, like Matthew Arnold, in the *Grande Chartreuse*, "wandering between two worlds, one dead the other powerless to be born....". That, indeed would move farce to tragedy.

Conclusion - Part 2

SUMMARY OF RECOMMENDATIONS

To aid the process of reform, the report makes the following summary of recommendations:

Chapter 1: Of Genealogy and Future Directions

Recommendation 1: *It is essential that reform of the* Access to Information Act *be undertaken as an important part of the political process now underway to renew Canadian democracy. A study of possible amendments to the legislation should be mandated either through a parliamentary committee or whatever body the current government establishes to replace the Law Reform Commission.*

Recommendation 2: *It is further recommended that the Information Commissioner request the Prime Minister to write to all Ministers to inform them of the importance of adherence to the requirements of the Act to the integrity of government and his intention to undertake open government reform.*

Recommendation 3: *That the Information Commissioner meet with the new Speaker of the House of Commons to recommend that a new standing committee be appointed to deal with the pressing issues of the Information Revolution, including ongoing reform of the* Access to Information Act.

Recommendation 4: *That this new Committee set aside time each year to hold hearings on the Information Commissioner's Annual Report and the reports on administration of the* Access to Information Act *submitted annually by government departments. The Committee should be mandated to ask the Commissioner to undertake special studies and would make recommendations for the ongoing improvement of the access act and information policy.*

Recommendation 5: *That the Committee be given research funds to carry on studies of information issues of interest to Parliament and the Canadian public, similar to the role of the United States Congress' Office of Technology Assessment. Another approach would to mandate the Office of the Information Commissioner as the research and policy arm for the Committee.*

Recommendation 6: *That a single Minister, preferably the President of the Treasury Board, be named as responsible for the* Access to Information Act *and that the Treasury Board be the Committee of Cabinet which considers access to information and government information dissemination issues.*

Recommendation 7: *That consideration be given to co-locating the Information Law and Privacy Section of the Department of Justice and the Information, Communications and Security Policy Division of the Treasury Board Secretariat in order to provide a statement of leadership on information issues and a critical mass of staff to work on legislative and policy solutions.*

Recommendation 8: *That the strategy for amending the* Access to Information Act *be a broad one which preserves and strengthens the "right to know" as the ultimate guarantee of information access for the citizen but surrounds this with general principles relating to the importance of government information in modern Canadian society.*

Recommendation 9: *That the title of the Act be changed to either the "Freedom of Information Act" or the "National Information Act", preferably the latter, to better express its purpose and intent.*

Recommendation 10: *That the purpose statement in sub-section 2(1) of the Act be amended to include the idea that unimpeded flow of information between the government and the public is essential to open, accountable government and that government information is a valuable national resource which provides the public with knowledge of government, society, and the economy as a means to effectively manage the government's operations and helps maintain the healthy performance of the*

economy; and is itself, under appropriate circumstances, a commodity in the marketplace.

Recommendation 11:

That a new section be added to the Act entitled "Government Information - General Management, Access and Dissemination" which contains provisions emphasizing the protection of the public's right to information as an objective for the management of government information, affirming the obligation of government institutions to provide for public access to records and to actively disseminate some types of information; requiring government institutions to employ electronic information dissemination mechanisms where this is appropriate, practical, and cost-effective and the product is easily accessible and useful to the public; and establishing criteria for "Avoiding Improper Restrictions on Information Dissemination". In a consequent amendment, section 70 of the Act, powers of the designated Minister, should be revamped to provide the Minister with the authority to guide government institutions in meeting the requirements to protect the public's right of access to government information.

Recommendation 12:

That section 30 of the Act be amended to include powers for the Information Commissioner to review the organization of information in government for purposes of access and dissemination, the appropriateness of public reference and charging mechanisms and to investigate all submissions for licensing databases.

Recommendation 13:

That section 68 of the Act be amended to eliminate the exclusion of published material from the coverage of the legislation, and that, in addition, that government institutions are required to organize, catalogue and advise the public of the existence of all government publications, including grey literature, through the inventory and government locator system described in the next section.

Recommendation 14:

Amend the definition of record in section 4 of the Act to read "information in records". This serves several ends. It clarifies the notion of relevance and the scope of the requests but, most important, it recognizes the

concept of automated information, where records are less easy to isolate than information.

Recommendation 15: *Amend section 11 of the Act and consequent regulatory power to provide a sensible modern way of charging for electronic information, which form part of an access request. This would have the salutary effect of making government institutions able to demonstrate how easy and cheap it is to make information available electronically.*

Recommendation 16: *That section 5 of the Act be amended to require government institutions to organize and index their information holdings and compile and maintain in a current state an electronic inventory of these for effective decision-making and to support both active dissemination of useful information to appropriate publics and general accessibility to non-exempted documentation. (All references to accessing manuals currently in the legislation should be wrapped up into this requirement.)*

Recommendation 17: *That section 5 of the Act be further amended to require an automated locator and inventory system maintained by the designated Minister and require that it be built on similar automated inventories (as described above) maintained in government institutions. This locator should be the engine of the Canada Information Network.*

Recommendation 18: *Add a section to the Act which sets out the criteria for the taxonomy of databases and require government institutions to identify all databases in accordance with the taxonomy.*

Recommendation 19: *Add a section to the Act which would place an obligation on government institutions to make accessible in open digital systems that majority of information that is not exempt and assure that any databases falling into categories one and two of the taxonomy are actively disseminated and are made available through public systems mandated by Act or consequent regulation. Institutions should be required to maintain an open database of information already released under the* Access to Information Act.

Recommendation 20: *Consider placing a new provision in the Act, which would set out the criteria to be considered by a government institution, including public interest and pricing or royalties guidance, when contemplating licensing a database to a private sector information provider and clearly mandate public-private sector partnerships.*

Recommendation 21: *Amend sub-section 71(1) of the Act to require government institutions to incorporate "access reading room" activities in any Info Centre, Business Centre, Single Window or other Service Centre approach, especially as these develop as electronic access points. These should be rationalized with the current access points used by Info Source, as public reference points for government information.*

Recommendation 22: *Provide a legislative direction that federal public reference tools be joined with provincial directories, such as the B.C. Online Freenet Project and should include any electronic versions of major documents released under the Act.*

Recommendation 23: *Advocate a full review of Crown Copyright to determine whether or not it is still relevant in the electronic world and subsequent rapid amendment of the Copyright Act once the review is completed.*

Recommendation 24: *Seek a legislative mandate for the Depository Services Program either in the National Library Act or the* Access to Information Act *after a full review to establish the systems role in the dissemination of public government information in digital formats.*

Chapter 2: Exemptions and Other Things That Go Bump in the Night

Recommendation 25: *The Information Commissioner should only advocate an unwarranted invasion of privacy test for the release of personal information as has been adopted in the Ontario and B.C. legislation if he believes it essential that more personal information needs to be released as a result of ATI requests.*

Recommendation 26: *That all exemptions under the* Access to Information Act *with the exception of section 19, paragraph*

20(1)(a), and any new provision dealing with Cabinet Confidences, be discretionary in nature and injury-based.

Recommendation 27: *That the degree of injury in exemptions not be altered in any reform process.*

Recommendation 28: *Provide a principle statement that indicates that the public interest is paramount where records reveal a grave environmental, health or safety hazard to the public on the model of the Ontario legislation.*

Recommendation 29: *Again following the Ontario model, provide a specific public interest override for section 21 (advice), section 13 (information in confidence from other governments), section 14 (federal-provincial affairs), section 17 (safety of individuals), section 18 (economic interests of government), section 22 (tests and audits), section 23 (solicitor-client privilege), and section 24 (statutory prohibitions). The public interest should be in protection of public health, public safety, the environment, law enforcement, the administration of justice and national defence and security.*

Recommendation 30: *Leave the public interest disclosure mechanism for personal information within the purview of the Privacy Act.*

Recommendation 31: *Extend the public interest override in subsection 20(6) of the Act to cover paragraph 20(1)(a), trade secrets.*

Recommendation 32: *Add a general provision at the beginning of the exemptions part of the Act which obliges heads of institutions to use their discretion in favour of access and openness as opposed to refusal.*

Recommendation 33: *Section 10 of the Act should be amended so that the power to neither confirm or deny the existence of a record is restricted to records relating to law enforcement and security and intelligence and an admonition made that the provision is to be used only when strictly necessary.*

Recommendation 34: *Section 10 of the Act should be amended to ensure that the reason for severing specific information in a record is made clear to a requester.*

Recommendation 35: *The government should be encouraged to issue a policy which states that no exemptions will be applied to results of public opinion research; that a listing of such research, updated no less frequently than each two months (60 days), must be maintained in the office of each institution's Access to Information Coordinator; and that the listing and public opinion results must be provided upon informal request by the public.*

Recommendation 36: *That the Act be amended to establish a separate regime for public opinion research which would require government institutions to list all such research within two months (60 days) of a project being undertaken and to release the results when requested informally to do so. Within the two month period, requests could be refused much in the same way as section 26, preparing a publication, currently operates.*

Recommendation 37: *That the Information Commissioner advocate and support a public repository for the results of public opinion research, preferably at a Canadian university.*

Section 13: Information Obtained In Confidence From Other Governments

Recommendation 38: *Section 13 of the Act should be amended to include the institutions or governments of components of foreign states and self-governing native bands.*

Recommendation 39: *The Information Commissioner should either request the government to undertake a study or mandate one himself to study the feasibility of making section 13(a) discretionary, injury based exemption in relation to the confidences of international organizations and foreign states.*

Recommendation 40: *Section 13 of the Act should be amended to make it a discretionary, injury-based exemption for provinces, municipalities, self-governing native bands and any other government entities in Canada*

Recommendation 41: *Section 13 of the Act should be incorporated into the public interest override.*

Recommendation 42: Section 13 of the Act should be amended to have the confidence end 15 years after the date on the record, except for those records relating to law enforcement, and security and intelligence.

Section 14: Federal-Provincial Affairs

Recommendation 43: *Section 14 of the Act should be amended to replace the word "affairs" with "negotiations".*

Recommendation 44: *Section 14 of the Act should be incorporated into the public interest override.*

Section 15: International Affairs and Defence

Recommendation 45: *That section 15 of the Act be amended to clarify that the classes of information listed are merely illustrations of possible injuries; the overriding issue should remain whether there is an injury to an identified state interest which is analogous to those sorts of state interest listed in the exemption.*

Section 16: Law Enforcement

Recommendation 46: *Amend section 16 of the Act to introduce an injury test into paragraphs 16(1)(a) and (b).*

Section 17: Safety of Individuals

Recommendation 47: *That section 17 of the Act be amended to incorporate the words "mental or physical health" into the threat to an individual's safety.*

Recommendation 48: *That section 17 of the Act be subject to a public interest override.*

Section 18: Economic Interests of Canada

Recommendation 49: *Section 18 of the Act should be amended so that it could not be used to withhold the results of product or*

environmental testing done by the government on its own activities.

Recommendation 50: *Paragraph 18(a) of the Act should be amended to narrow the term "substantial value", relating to government trade secrets and financial, commercial, scientific and technical information, to "substantial monetary value".*

Recommendation 51: *Section 18 of the Act should adjusted to protect the "confidential business" information of Special Operating Agencies.*

Recommendation 52: *That section 18 be subject to a public interest override.*

Section 20: Third Party Information

Recommendation 53: *That the term "trade secret" should be defined in the* Access to Information Act.

Recommendation 54: *That the above definition be subjected to legal scrutiny before inclusion in the Act to ensure that it meets the requirements of the strict law in this area.*

Recommendation 55: *That the public interest override currently in subsection 20(6) of the Act be extended to paragraph 20(1)(a), trade secrets.*

Recommendation 56: *That section 20 be amended to allow substitutional service of notification (e.g., by public notice or advertisement) where this is effective, practical and less costly.*

Recommendation 57: *That the Act be amended to clarify that third parties bear the onus of proof before the Federal Court when they challenge decisions to disclose records that may contain confidential business information.*

Recommendation 58: *That the Act be amended to provide in section 44 a time limit (20 or 30 days) by which an intervening third party must seek a hearing before the Federal Court.*

Recommendation 59: *That section 20 of the Act be amended to permit protection of information (i) supplied by Indian bands, band associations and tribal councils recognized by the Department of Indian Affairs, and, (ii) about Indian band trust accounts which are held by government institutions, but not supplied by the band.*

Section 21: Advice and Recommendations

Recommendation 60: *That section 21 of the Act be amended to encompass an injury test.*

Recommendation 61: *That section 21 of the Act be clarified as to the type of sensitive decision-making information it covers and include a listing of those type of documents it specifically does not cover.*

Recommendation 62: *That section 21 of the Act be amended to reduce the current time limit on the exemption from 20 to 10 years.*

Recommendation 63: *That section 21 of the Act be amended in order to restrict its application to advice and recommendations exchanged among public servants, ministerial staff and Ministers.*

Recommendation 64: *That section 21 of the Act be amended to add a definition of advice, perhaps the balanced definition currently in the Treasury Board policy manual.*

Recommendation 65: *Section 21 of the Act be incorporated in the public interest override provision.*

Recommendation 66: *That paragraph 21(1)(d) of the Act be amended to exclude rejected plans from the coverage of the exemption.*

Section 22: Tests and Audits

Recommendation 67: *That section 22 of the Act be incorporated in the specific public interest override provision.*

Section 23: Solicitor-Client Privilege

Recommendation 68: *That amendment be considered for section 23 that either clarifies that the exemption will only be used in cases where litigation or negotiations are underway or are reasonably foreseeable, or alternatively, permits the waiving of solicitor-client privilege for a portion of the requested records, without prejudicing the claim for the other portion.*

Recommendation 69: *That section 23 of the Act be incorporated in the specific public interest override provision.*

Section 24: Statutory Prohibitions

Recommendation 70: *That the review of statutes under section 24 undertaken by the Standing Committee be immediately reviewed by the Department of Justice and a public report issued as to which statutes are being summarilarly removed from the list and suggestions made as to how section 24 will be reformed to prevent it becoming a loophole around the* Access to Information Act. *The Commissioner should suggest to the Minister of Justice that this is a small but very tangible step toward open and accountable government.*

Recommendation 71: *Section 24 should be made subject to the specific public interest override provision.*

Section 25: Severance

Recommendation 72: *That section 25 be clarified to reinforce the principle that severance applies not only to records, a part of which could be protected by a discretionary exemption, but also to records where part is protected by a mandatory exemption.*

Recommendation 73: *That section 25 of the Act be amended to indicate that access is to "information" and not to "records". This would aid access to computer-based information and perhaps to resolve the debate over relevance where information pertinent to a request is mixed up with information not involved with the subject.*

Section 26: Information to be Published

Recommendation 74: *That section 26 of the Act be amended to reduce the time involved in printing a document from 90 days to 60 days. This is ample time given modern printing methods and would further reduce time delays.*

Possible New Exemption

Recommendation 75: *That the Act be amended to include an exemption dealing with information the disclosure of which could be harmful to the conservation of endangered species or heritage sites.*

Chapter 3: Aladdin's Lamp or Old confidences for New

Recommendation 76: *Section 69 of the Act should be amended to convert it into a mandatory, class exemption.*

Recommendation 77: *The current twenty-year exemption covering the exclusion of Cabinet documents from the Act should be converted into a fifteen-year rule as to when documents fall outside the mandatory, class exemption for Cabinet Confidences and may only be exempted under some other provision (e.g., law enforcement or national security). The period of 15 years was arrived at by the Committee as the maximum duration of three Parliaments. This seems reasonable and has been adopted by British Columbia.*

Recommendation 78: *That paragraph 69(3)(b) be redrafted to cover analysis portions of Memoranda to Cabinet now made available to the Auditor General and these be made releasable if a decision has been made public, the decision has been implemented, or five years have passed since the decision was made or considered.*

Recommendation 79: *That appeals of decisions under the Cabinet records exemption should be heard by the Associate Chief Justice of the Federal Court after review by the Information Commissioner.*

Chapter 4: Ombudsmen and Quasi-Judicial Potentates: Whither the role of the Information Commissioner

Recommendation 80: *That section 37 and other appropriate parts of the Act be amended to redefine the Commissioner's power and role as described in the above two paragraphs.*

Recommendation 81: *That the Commissioner establish a database of reports, investigations, rulings and other public documentation which will be available through the Canada Information Network.*

Recommendation 82: *That the Act be amended to give the Commissioner mandates for public education to engage in or commission research into access issues and power to comment on the implications for access to information of proposed legislative schemes or programs of public bodies.*

Recommendation 83: *That the Act be amended to permit the head of a government institution to request from the Information Commissioner an order to cease to respond to access requests that, because of their repetitious or systematic nature, would unreasonably interfere with the operations of the institution. The Commissioner would only issue an order after an immediate investigation of the situation and this order would be reviewable by the Federal Court.*

Recommendation 84: *That sections 49 and 50 of the Act be amended so as to provide a single de novo standard of review.*

Recommendation 85: *That the Act be clarified to explicitly establish the Federal Court's general jurisdiction to substitute its judgement for that of the government institution in interpreting the scope of all exemptions.*

Recommendation 86: *That section 35 of the Act be amended to make it clear that representation made by one party during the private investigation of a complaint by the Commissioner are not accessible by the other parties to the complaint through another access request. There is a similar need to protect information which has been prepared during the litigation stage.*

Chapter 5: Where Lies the Kingdom of Access?: The Question of Application and Scope.

Recommendation 87: *That all federal government institutions, including Special Operating Agencies and Crown Corporations, be covered by the* Access to Information Act *unless Parliament chooses to exclude an entity in explicit terms.*

Recommendation 88: *That the Department of Justice be instructed to create, maintain and make generally available to the public an up-to-date list of those institutions covered by the* Access to Information Act.

Recommendation 89: *That special provision be made to exclude from the coverage of the* Access to Information Act *all program materials of the CBC.*

Recommendation 90: *That Parliament be asked to include in amended legislation coverage of the Senate, the House of Commons, the Library of Parliament and all parliamentary agent bodies, but excluding the offices of Senators and Members of Parliament.*

Recommendation 91: *That special provisions for determination of complaints and appeal be included in the* Access to Information Act *to enable the Office of the Information Commissioner to be covered by the legislation.*

Recommendation 92: *That where the federal government controls a public institution by means of a power of appointment over the majority of the members of the agency's governing body or committee, then the* Access to Information Act *should apply to it.*

Recommendation 93: *That provision be made in the* Access to Information Act *for the removal from the official schedule maintained by the Department of Justice of institutions which are defunct or for some other reason are no longer subject to the legislation.*

Recommendation 94: *That the Act be amended to include a statement of scope at its beginning on the British Columbia model which clearly sets out what is and what is not subject to the* Access to Information Act.

Chapter 6: A Technician's Delight: Administration Fees

Recommendation 95: *Section 6 of the Act, request for access to a record, should be amended to refer to "information in records" to bring it in line with similar amendments and aid in solving the problem of relevance in relation to requests that uncover documents of a mixed nature.*

Recommendation 96: *Section 8 of the Act, transferring requests, should be amended to provide that where a request is not transferred by the recipient institution to the institution of greater interest in what is sought, the recipient institution must give the institution of greater interest reasonable notice of its intention to disclose unless; (i) the recipient institution has already consulted the institution of greater interest on the particular request; or, (ii) there is an agreement between the two institutions waiving such notice.*

Recommendation 97: *That a new provision be added to the Act which imposes on the head of a government institution the "duty to assist applicants".*

Recommendation 98: *That section 9 of the Act, extension of time limits, be amended to restrict the delegation of granting time extensions to a senior official, perhaps Assistant Deputy Minister level, with the hopes of increasing the accountability for performance by institutions.*

Recommendation 99: *That the strategy on an application fee should be to have it rescinded but if this is not possible then an application fee should buy the current five hours of free service for non-commercial requests. A reasonable compromise might be a $15.00 application fee, which buys the five free hours and fifty pages of photocopying or some other appropriate amount of other copies.*

Recommendation 100: *That the regulatory making powers in section 77 of the Act be revised to enable them to reflect reasonableness in pricing and new, cheaper formats for presenting information and rates and labour costs adjusted to reflect current levels.*

Recommendation 101: *That section 11 of the Act be amended to include criteria for deciding when a request is commercial in*

nature and provision made for procedures for dealing with such requests, including alternative processing, with the requirement for review by the Information Commissioner; special fee structures more reflective of actual costs; an estimate of costs; payment of a deposit and regulatory power to set detailed rates and procedures.

Recommendation 102: *That fee waiver criteria based generally on the text in* Open and Shut *be incorporated in any amendment of the Act.*

Recommendation 103: *That the Information Commissioner be given the power to make binding orders in regard to fee waiver decisions.*

Recommendation 104: *That the Act be amended to permit institutions to enter into an agreement with the Treasury Board to retain all or part of the fees they collect and apply them to improving the access program.*

Recommendation 105: *That section 12 of the Act be modernized to permit access and charging mechanisms for information in other than traditional formats (including alternative formats for the handicapped) and also be amended to read "access to information in records".*

ACCESS TO INFORMATION ACT

CHAPTER A-1

An Act to extend the present laws of Canada that provide access to information under the control of the Government of Canada

SHORT TITLE

Short title

1. This Act may be cited as the *Access to Information Act*.

Legislative History
1980-81-82-83, c. 111, Sch. I "1".

Recommended Change: That the legislation be renamed either the Freedom of Information Act *or the* National Information Act.

PURPOSE OF ACT

Purpose

2. (1) The purpose of this Act is to extend the present laws of Canada to provide a right of access to information in records under the control of a government institution in accordance with the principles that government information should be available to the public, that necessary exceptions to the right of access should be limited and specific and that decisions on the disclosure of government information should be reviewed independently of government.

LOI SUR L'ACCÈS À L'INFORMATION

CHAPITRE A-1

Loi visant à compléter la législation canadienne en matière d'accès à l'information relevant de l'administration fédérale

TITRE ABRÉGÉ

1. *Loi sur l'accès à l'information.* Titre abrégé

Historique
1980-81-82-83, ch. 111, ann. I «1».

Changement recommandé : Que l'on substitue au titre actuel de la Loi celui de Loi sur la liberté d'information *ou de* Loi nationale de l'information.

OBJET DE LA LOI

2. (1) La présente loi a pour objet d'élargir l'accès aux documents de l'administration fédérale en consacrant le principe du droit du public à leur communication, les exceptions indispensables à ce droit étant précises et limitées et les décisions quant à la communication étant susceptibles de recours indépendants du pouvoir exécutif. Objet

Complementary procedures

(2) This Act is intended to complement and not replace existing procedures for access to government information and is not intended to limit in any way access to the type of government information that is normally available to the general public.

Recommended Change: That the purpose statement be amended to include the idea that unimpeded flow of information between the government and the public is essential to open, accountable government and that government information is a valuable national resource which provides the public with knowledge of government, society, and the economy; is a means to effectively manage the government's operations and helps maintain the healthy performance of the economy; and is itself, under appropriate circumstances, a commodity in the marketplace.

Legislative History
1980-81-82-83, c. 111, Sch. I "2".

Recommended Change: That the Act be amended to include a statement of scope at its beginning on the British Columbia model which clearly sets out what is and what is not subject to the legislation.

Étoffement des modalités d'accès

(2) La présente loi vise à compléter les modalités d'accès aux documents de l'administration fédérale; elle ne vise pas à restreindre l'accès aux renseignements que les institutions fédérales mettent normalement à la disposition du grand public.

Changement recommandé : Que le paragraphe de la Loi qui en précise l'objet soit modifié de façon à englober l'idée a) que le libre échange de l'information entre le gouvernement et le public est essentiel à la transparence et à l'imputabilité du gouvernement et b) que l'information gouvernementale est une ressource nationale de grande valeur qui permet au public d'acquérir des connaissances sur le gouvernement, la société et l'économie, en plus d'être un moyen d'assurer une gestion efficace des affaires du gouvernement et de contribuer à maintenir la prospérité de l'économie, tout en étant elle-même, dans certaines circonstances, un produit de consommation.

Historique
1980-81-82-83, ch. 111, ann. I «2»;1984, ch. 40, art. 79.

Changement recommandé : Que la Loi soit modifiée par l'ajout à son début d'un énoncé de sa portée inspiré du modèle de la loi de la Colombie-Britannique, qui dispose clairement ce qui y est assujetti ou pas.

INTERPRETATION

Definitions

3. In this Act,

DÉFINITIONS

Définitions

3. Les définitions qui suivent s'appliquent à la présente loi.

"alternative format" «support de...»

"alternative format", with respect to a record, means a format that allows a person with a sensory disability to read or listen to that record;

«Commissaire à l'information» Le commissaire nommé conformément à l'article 54.

«Commissaire à l'information» "Information..."

"Court" «Cour»

"Court" means the Federal Court--Trial Division;

«Cour» La Section de première instance de la Cour fédérale.

«Cour» "Court"

"designated Minister" «ministre..»

"designated Minister", in relation to any provision of this Act, means such member of the Queen's Privy Council for Canada as is designated by the Governor in Council as the Minister for the purposes of that provision;

«déficience sensorielle» Toute déficience liée à la vue ou à l'ouïe.

«déficience sensorielle» "sensory disability"

"foreign state" «État...»

"foreign state" means any state other than Canada;

«document» Tous éléments d'information, quels que soient leur forme et leur support, notamment correspondance, note, livre, plan, carte, dessin, diagramme, illustration ou graphique, photographie, film, microformule, enregistrement sonore, magnétoscopique ou informatisé, ou toute reproduction de ces éléments d'information.

«document» "record"

"government institution" «institution...»

"government institution" means any department or ministry of state of the Government of Canada listed in Schedule I or any body or office listed in Schedule I;

«État étranger» Tout État autre que le Canada.

«État étranger» "foreign..."

"head" «responsable...»

"head", in respect of a government institution, means

(*a*) in the case of a department or ministry of state, the member of the Queen's Privy Council for Canada presiding over that institution, or

(*b*) in any other case, the person designated by order in

«institution fédérale» Tout ministère ou département d'État relevant du gouvernement du Canada, ou tout organisme, figurant à l'annexe I.

«institution fédérale» "government..."

council pursuant to this paragraph and for the purposes of this Act to be the head of that institution;

"Information Commissioner" «Commissaire...»

"Information Commissioner" means the Commissioner appointed under section 54;

«ministre désigné» Le membre du Conseil privé de la Reine pour le Canada chargé par le gouverneur en conseil de l'application d'une ou de plusieurs dispositions de la présente loi.

«ministre désigné» "designated..."

"record" «document»

"record" includes any correspondence, memorandum, book, plan, map, drawing, diagram, pictorial or graphic work, photograph, film, microform, sound recording, videotape, machine readable record, and any other documentary material, regardless of physical form or characteristics, and any copy thereof;

«responsable d'institution fédérale»

a) Le membre du Conseil privé de la Reine pour le Canada sous l'autorité de qui est placé un ministère ou un département d'État;

b) la personne désignée par décret, conformément au présent alinéa, en qualité de responsable, pour l'application de la présente loi, d'une institution fédérale autre que celles mentionnées à l'alinéa *a*).

«responsable d'institution fédérale» "head"

"sensory disability" «déficience sensorielle»

"sensory disability" means a disability that relates to sight or hearing;

«support de substitution» Tout support permettant à une personne ayant une déficience sensorielle de lire ou d'écouter un document.

«support de substitution» "alternative format"

"third party" «tiers»

"third party", in respect of a request for access to a record under this Act, means any person, group of persons or organization other than the person that made the request or a government institution.

«tiers» Dans le cas d'une demande de communication de document, personne, groupement ou organisation autres que l'auteur de la demande ou qu'une institution fédérale.

«tiers» "third..."

Legislative History
1980-81-82,83, c. 111, Sch. I "3"; 1992, c. 21, s. 1.

Historique
1980-81-82-83, ch. 111, ann. I «3»; 1992, ch. 21, art. 1.

ACCESS TO GOVERNMENT RECORDS

Right of Access

Right to access to records

4. (1) Subject to this Act, but notwithstanding any other Act of Parliament, every person who is

(*a*) a Canadian citizen, or

(*b*) a permanent resident within the meaning of the *Immigration Act*,

has a right to and shall, on request, be given access to any record under the control of a government institution.

Extension of right by order

(2) The Governor in Council may, by order, extend the right to be given access to records under subsection (1) to include persons not referred to in that subsection and may set such conditions as the Governor in Council deems appropriate.

Records produced from machine readable records

(3) For the purposes of this Act, any record requested under this Act that does not exist but can, subject to such limitations as may be prescribed by regulation, be produced from a machine readable record under the control of a government institution using computer hardware and software and technical expertise normally used by the government institution shall be deemed to be a record under the control of the government institution.

Legislative History

1980-81-82-83, c. 111, Sch. I "4"; 1992, c. 1, s. 144 (Sch. VII, item 1(F)).

ACCÈS AUX DOCUMENTS DE L'ADMINISTRATION FÉDÉRALE

Droit d'accès

Droit d'accès

4. (1) Sous réserve des autres dispositions de la présente loi mais nonobstant toute autre loi fédérale, ont droit à l'accès aux documents relevant d'une institution fédérale et peuvent se les faire communiquer sur demande :

a) les citoyens canadiens;

b) les résidents permanents au sens de la *Loi sur l'immigration*.

Extension par décret

(2) Le gouverneur en conseil peut, par décret, étendre, conditionnellement ou non, le droit d'accès visé au paragraphe (1) à des personnes autres que celles qui y sont mentionnées.

Document issu d'un document informatisé

(3) Pour l'application de la présente loi, les documents qu'il est possible de préparer à partir d'un document informatisé relevant d'une institution fédérale sont eux-mêmes considérés comme relevant de celle-ci, même s'ils n'existent pas en tant que tels au moment où ils font l'objet d'une demande de communication. La présente disposition ne vaut que sous réserve des restrictions réglementaires éventuellement applicables à la possibilité de préparer les documents et que si l'institution a normalement à sa disposition le matériel, le logiciel et les compétences techniques nécessaires à la préparation.

Recommended Change : Amend the definition of record to read "Information about Government Institutions".

Historique
1980-81-82-83, ch. 111, ann. I «4»; 1992, ch. 1, art. 144 (ann. VII, nº 1(F)).

Changement recommandé : Que l'expression «aux documents» figurant au paragraphe 4(1) de la Loi soit remplacée par «à l'information sur les institutions gouvernementales, et que le mot «les» soit remplacé par «la».

Information about Government Institutions

Répertoire des institutions fédérales

Publication on government institutions

5. (1) The designated Minister shall cause to be published, on a periodic basis not less frequently than once each year, a publication containing

(*a*) a description of the organization and responsibilities of each government institution, including details on the programs and functions of each division or branch of each government institution;

(*b*) a description of all classes of records under the control of each government institution in sufficient detail to facilitate the exercise of the right of access under this Act;

(*c*) a description of all manuals used by employees of each government institution in administering or carrying out any of the programs or activities of the government institution; and

(*d*) the title and address of the appropriate officer for each government institution to whom requests for access to records under this Act should be sent.

Répertoire des institutions fédérales

5. (1) Le ministre désigné fait publier, selon une périodicité au moins annuelle, un répertoire des institutions fédérales donnant, pour chacune d'elles, les indications suivantes :

a) son organigramme et ses attributions, ainsi que les programmes et fonctions de ses différents services;

b) les catégories de documents qui en relèvent, avec suffisamment de précisions pour que l'exercice du droit à leur accès en soit facilité;

c) la désignation des manuels qu'utilisent ses services dans l'application de ses programmes ou l'exercice de ses activités;

d) les titre et adresse du fonctionnaire chargé de recevoir les demandes de communication.

Bulletin

(2) The designated Minister shall cause to be published, at least twice each year, a bulletin to bring the material contained in the publication published under subsection (1) up to date and to provide to the public other useful information relating to the operation of this Act.

(2) Le ministre désigné fait publier, au moins deux fois l'an, un bulletin destiné à mettre à jour l'information visée au paragraphe (1) et à fournir tous renseignements utiles concernant la mise en oeuvre de la présente loi.

Bulletin

Descriptions in publication and bulletins

(3) Any description that is required to be included in the publication or bulletins published under subsection (1) or (2) may be formulated in such a manner that the description does not itself constitute information on the basis of which the head of a government institution would be authorized to refuse to disclose a part of a record requested under this Act.

(3) Les indications à insérer dans le répertoire ou le bulletin peuvent être formulées de manière à ne pas constituer des renseignements qui justifieraient de la part du responsable d'une institution fédérale un refus de communication partielle d'un document.

Indications contenues dans le répertoire ou le bulletin

Publication and bulletin to be made available

(4) The designated Minister shall cause the publication referred to in subsection (1) and the bulletin referred to in subsection (2) to be made available throughout Canada in conformity with the principle that every person is entitled to reasonable access thereto.

(4) Le ministre désigné est responsable de la diffusion du répertoire et du bulletin dans tout le Canada, étant entendu que toute personne a le droit d'en prendre normalement connaissance.

Diffusion

Legislative History
1980-81-82-83, c. 111, Sch. I "5".

Historique
1980-81-82-83, ch. 111, ann. I «5».

Recommended Change: That a new section be added to the Act entitled "Governement Information — General Management, Access and Dissemination" which contains provisions emphasizing the protection of the public's right to information as an objective for the management of government information; affirming the obligation of government institutions to provide for public access to information in records and to actively disseminate some types of information; requiring governement institutions to employ

Changement recommandé : Que soit ajouté à la Loi un nouvel article intitulé «Information gouvernementale — Gestion, accès et diffusion d'ensemble» prévoyant des dispositions qui renforceraient la protection du droit du public à l'information, pris en tant qu'objectif de gestion de l'information gouvernementale, confirmeraient l'obligation des institutions gouvernementales d'assurer l'accès du public à leurs documents et de communiquer activement certaines catégories de renseignements, en plus de leur enjoindre d'employer des mécanismes électroniques de

electronic information dissemination mechanisms where this is appropriate, practical, and cost-effective and the product is easily accessible and useful to the public; and establishing criteria for "Avoiding Improper Restrictions on Information Dissemination".

Recommended Change: That section 5 be amended to require government institutions to organize and index their information holdings and compile and maintain in a current state an electronic inventory of these for effective decisionmaking and to support both active dissemination of useful information to appropriate publics and general accessibility to non-exempted documentation. All references to accessing manuals currently in section 71 should be wrapped up into this new provision.

Recommended Change: That section 5 be further amended to require an automated locator and inventory system maintained by the designated Minister and require that it be built on similar automated inventories (as described above) maintained in government institutions. This locator should be the engine of the Canada Information Network.

Recommended Change: Add a new section to the Act which sets out the criteria for the taxonomy of databases and requireds government institutions to identify all databases in accordance with the taxonomy.

Recommended Change: Add a section to the Act which would place an obligation on government institutions to make accessible in

communication de l'information dans tous les cas où il est logique, pratique et rentable de le faire et où les produits sont facilement accessibles et utiles au public, et établiraient des critères n'autorisant «Aucune restriction indue de la communication de l'information».

Changement recommandé : Que l'article 5 soit modifié pour que les institutions gouvernementales soient tenues d'organiser et de répertorier les renseignements qu'elles détiennent ainsi que de compiler et de conserver un répertoire électronique à jour de ces renseignements, à la fois pour favoriser un processus décisionnel efficace et pour faciliter tant la diffusion active de renseignements utiles aux auditoires appropriés que l'accessibilité générale de la documentation ne faisant pas l'objet d'exceptions. Cet changement devrait englober tous les renvois aux manuels d'accès actuellement prévus par l'article 71.

Changement recommandé : Que l'article 5 soit aussi modifié de façon à rendre obligatoire le maintien, par le ministre désigné, d'un système informatique de localisation et de répertoire fondé sur les répertoires informatiques analogues (tels que décrits au paragraphe précédent) tenus par les institutions gouvernementales. Ce système de localisation devrait être le moteur du Réseau d'information du Canada.

Changement recommandé : Que soit ajouté à la Loi un article définissant les critères de taxinomie des bases de données et enjoignant aux institutions gouvernementales d'identifier toutes leurs bases de données conformément à cette taxinomie.

open digital systems that majority of information that is not exempt and assure that any databases falling into categories one and two of the taxonomy are actively disseminated and are made available through public systems mandated by the Act or consequent regulation. Institutions should be required to maintain an open database of information already released under the Access to Information Act.

Recommended Change: Add a section to the Act which would set out criteria to be considered by a government institution, including public interest and pricing and royalties guidance, when contemplating licensing a database to a private sector information provider and clearly mandate public-private sector partnerships.

Recommended Change: Provide legislative direction that federal public reference tools be joined with provincial directories and should inclue any electronic versions of major documents released under the Act.

Changement recommandé : Que soit ajouté à la Loi un article imposant aux institutions gouvernementales l'obligation de rendre accessibles dans des systèmes informatiques évolutifs la majorité des renseignements qui ne font pas l'objet d'exceptions et de veiller à ce que toutes les bases de données de la première et de la deuxième catégories de la taxinomie soient activement distribuées et communiquées grâce à des systèmes publics mis sur pied en vertu de la Loi ou de la réglementation qui en découle. Les institutions gouvernementales devraient être tenues de conserver une base de données évolutive des renseignements déjà communiqués en vertu de la Loi.

Changement recommandé : Que soit ajouté à la Loi un article précisant les critères sur lesquels les institutions gouvernementales devraient se fonder notamment en matière d'intérêt public et de détermination des droits ou des redevances exigibles lorsqu'elles envisagent d'autoriser un fournisseur d'information du secteur privé à exploiter une base de données sous licence et prévoyant clairement des partenariats du secteur public et du secteur privé.

Changement recommandé : Que la Loi dispose que les instruments fédéraux de référence à l'intention du public soient combinés avec les répertoires provinciaux et qu'ils englobent toutes les versions électroniques des documents d'importance majeure communiqués en vertu de la Loi.

Requests for Access

Demandes de communication

Request for access to record

6. A request for access to a record under this Act shall be made in writing to the government institution that has control of the record and shall provide sufficient detail to enable an experienced employee of the institution with a reasonable effort to identify the record.

Legislative History
1980-81-82-83, c. 111, Sch. I "6".

Recommended Change: Section 6 should be amended to refer to "information in records" to bring it in line with similar amendments elsewhere.

Demandes de communication

6. La demande de communication d'un document se fait par écrit auprès de l'institution fédérale dont relève le document; elle doit être rédigée en des termes suffisamment précis pour permettre à un fonctionnaire expérimenté de l'institution de trouver le document sans problèmes sérieux.

Historique
1980-81-82-83, ch. 111, ann. I «6».

Changement recommandé : Que l'article 6 soit modifié par la substitution de l'expression «des renseignements contenus dans un document» à «d'un document» et de «les renseignements» à «le document», pour le rendre compatible avec les autres articles modifiés dans le même sens.

Notice where access requested

7. Where access to a record is requested under this Act, the head of the government institution to which the request is made shall, subject to sections 8, 9 and 11, within thirty days after the request is received,

(*a*) give written notice to the person who made the request as to whether or not access to the record or a part thereof will be given; and

(*b*) if access is to be given, give the person who made the request access to the record or part thereof.

Legislative History
1980-81-82-83, c. 111, Sch. I "7".

Recommended Change: That a new provision be added to the Act which imposes on the head of a government

Notification

7. Le responsable de l'institution fédérale à qui est faite une demande de communication de document est tenu, dans les trente jours suivant sa réception, sous réserve des articles 8, 9 et 11 :

a) d'aviser par écrit la personne qui a fait la demande de ce qu'il sera donné ou non communication totale ou partielle du document;

b) le cas échéant, de donner communication totale ou partielle du document.

Historique
1980-81-82-83, ch. 111, ann. I «7».

Changement recommandé : Qu'une nouvelle disposition soit ajoutée à la Loi afin d'imposer aux responsables

institution the "duty to assist applicants".

des institutions gouvernementales le «devoir d'aider les demandeurs».

Transfer of request

8. (1) Where a government institution receives a request for access to a record under this Act and the head of the institution considers that another government institution has a greater interest in the record, the head of the institution may, subject to such conditions as may be prescribed by regulation, within fifteen days after the request is received, transfer the request and, if necessary, the record to the other government institution, in which case the head of the institution transferring the request shall give written notice of the transfer to the person who made the request.

Transmission de la demande

8. (1) S'il juge que le document objet de la demande dont a été saisie son institution concerne davantage une autre institution fédérale, le responsable de l'institution saisie peut, aux conditions réglementaires éventuellement applicables, transmettre la demande, et, au besoin, le document, au responsable de l'autre institution. Le cas échéant, il effectue la transmission dans les quinze jours suivant la réception de la demande et en avise par écrit la personne qui l'a faite.

Deeming provision

(2) For the purposes of section 7, where a request is transferred under subsection (1), the request shall be deemed to have been made to the government institution to which it was transferred on the day the government institution to which the request was originally made received it.

Départ du délai

(2) Dans le cas prévu au paragraphe (1), c'est la date de réception par l'institution fédérale saisie de la demande qui est prise en considération comme point de départ du délai mentionné à l'article 7.

Meaning of greater interest

(3) For the purpose of subsection (1), a government institution has a greater interest in a record if

(*a*) the record was originally produced in or for the institution; or

(*b*) in the case of a record not originally produced in or for a government institution, the institution was the first government institution to receive the record or a copy thereof.

Justification de la transmission

(3) La transmission visée au paragraphe (1) se justifie si l'autre institution :

a) est à l'origine du document, soit qu'elle l'ait préparé elle-même ou qu'il ait été d'abord préparé à son intention;

b) est la première institution fédérale à avoir reçu le document ou une copie de celui-ci, dans les cas où ce n'est pas une institution fédérale qui est à l'origine du document.

Legislative History

1980-81-82-83, c. 111, Sch. I "8".

Historique

1980-81-82-83, ch. 111, ann. I «8».

Recommended Change: Section 8 should be amended to provide that where a request is not transferred by the recipient institution to the institution of greater interest in what is sought, the recipient institution must give the institution of greater interest notice of its intention to disclose unless : (i) the recipient institution has already consulted the institution of greater interest on the particular request; or (ii) there is an agreement between the two institutions waiving such notice.

Changement recommandé : Que l'article 8 soit modifié de façon à préciser que, dans les cas où la demande n'est pas transmise par l'institution saisie à l'institution davantage concernée par les renseignements demandés, la première doit donner à la seconde un préavis raisonnable de son intention de communiquer les renseignements, à moins (i) que la première n'ait déjà consulté la seconde au sujet de la demande en question; ou (ii) que les deux n'aient convenu de renoncer à l'envoi d'un tel avis.

Extension of time limits

9. (1) The head of a government institution may extend the time limit set out in section 7 or subsection 8(1) in respect of a request under this Act for a reasonable period of time, having regard to the circumstances, if

(*a*) the request is for a large number of records or necessitates a search through a large number of records and meeting the original time limit would unreasonably interfere with the operations of the government institution,

(*b*) consultations are necessary to comply with the request that cannot reasonably be completed within the original time limit, or

(*c*) notice of the request is given pursuant to subsection 27(1)

by giving notice of the extension and, in the circumstances set out in paragraph (*a*) or (*b*), the length of the extension, to the person who made the request within thirty days after the request is received, which notice shall contain a statement that the person has a right to make a

Prorogation du délai

9. (1) Le responsable d'une institution fédérale peut proroger le délai mentionné à l'article 7 ou au paragraphe 8(1) d'une période que justifient les circonstances dans les cas où :

a) l'observation du délai entraverait de façon sérieuse le fonctionnement de l'institution en raison soit du grand nombre de documents demandés, soit de l'ampleur des recherches à effectuer pour donner suite à la demande;

b) les consultations nécessaires pour donner suite à la demande rendraient pratiquement impossible l'observation du délai;

c) avis de la demande a été donné en vertu du paragraphe 27(1).

Dans l'un ou l'autre des cas prévus aux alinéas *a*), *b*) et *c*), le responsable de l'institution fédérale envoie à la personne qui a fait la demande, dans les trente jours suivant sa réception, un avis de prorogation de délai, en lui faisant part de son droit de déposer une

complaint to the Information Commissioner about the extension.

plainte à ce propos auprès du Commissaire à l'information; dans les cas prévus aux alinéas *a*) et *b*), il lui fait aussi part du nouveau délai.

Notice of extension to Information Commissioner

(2) Where the head of a government institution extends a time limit under subsection (1) for more than thirty days, the head of the institution shall give notice of the extension to the Information Commissioner at the same time as notice is given under subsection (1).

Avis au Commissaire à l'information

(2) Dans les cas où la prorogation de délai visée au paragraphe (1) dépasse trente jours, le responsable de l'institution fédérale en avise en même temps le Commissaire à l'information et la personne qui a fait la demande.

Legislative History
1980-81-82-83, c. 111, Sch. I "9".

Recommended Change: That section 9 be amended to restrict the delegation of granting time extensions to a senior official, perhaps Assistant Deputy Minister level, with the hopes of increasing the accountability for performance by institutions.

Historique
1980-81-82-83, ch. 111, ann. I «9».

Changement recommandé : Que l'article 9 soit modifié afin de limiter la délégation du pouvoir de prorogation à un haut fonctionnaire, peut-être au niveau de sous-ministre adjoint, afin d'accroître l'imputabilité du rendement des institutions.

Where access is refused

10. (1) Where the head of a government institution refuses to give access to a record requested under this Act or a part thereof, the head of the institution shall state in the notice given under paragraph 7(*a*)

Refus de communication

10. (1) En cas de refus de communication totale ou partielle d'un document demandé en vertu de la présente loi, l'avis prévu à l'alinéa 7*a*) doit mentionner, d'une part, le droit de la personne qui a fait la demande de déposer une plainte auprès du Commissaire à l'information et, d'autre part :

(*a*) that the record does not exist, or

a) soit le fait que le document n'existe pas;

(*b*) the specific provision of this Act on which the refusal was based or, where the head of the institution does not indicate whether a record exists, the provision on which a refusal could reasonably be expected to be based if the record existed,

b) soit la disposition précise de la présente loi sur laquelle se fonde le refus ou, s'il n'est pas fait état de l'existence du document, la disposition sur laquelle il pourrait vraisemblablement se fonder si le document existait.

and shall state in the notice that the person who made the request has a

right to make a complaint to the Information Commissioner about the refusal.

Existence of a record not required to be disclosed

(2) The head of a government institution may but is not required to indicate under subsection (1) whether a record exists.

(2) Le paragraphe (1) n'oblige pas le responsable de l'institution fédérale à faire état de l'existence du document demandé.

Dispense de divulgation de l'existence d'un document

Deemed refusal to give access

(3) Where the head of a government institution fails to give access to a record requested under this Act or a part thereof within the time limits set out in this Act, the head of the institution shall, for the purposes of this Act, be deemed to have refused to give access.

(3) Le défaut de communication totale ou partielle d'un document dans les délais prévus par la présente loi vaut décision de refus de communication.

Présomption de refus

Legislative History
1980-81-82-83, c. 111, Sch. I "10".

Recommended Change: Amend section 10 so that the power to neither confirm or deny the existence of a record is restricted to records relating to law enforcement and security and intelligence and an admonition is made that the provision is to be used only when strictly necessary.

Recommended Change: Section 10 should be amended to ensure that the reason for severing specific information in a record is made clear to a requester.

Historique
1980-81-82-83, ch. 111, ann. I «10».

Changement recommandé : Que l'article 10 soit modifié de façon à ce que le pouvoir de ne pas confirmer ou nier l'existence d'un document soit limité aux documents relatifs aux questions d'application de la loi, de sécurité et de renseignement, et qu'il puisse être invoqué seulement si c'est strictement nécessaire.

Changement recommandé : Que l'article 10 soit modifié de façon à ce que les motifs du prélèvement de renseignements particuliers d'un document soient clairement précisés au demandeur.

Fees

11. (1) Subject to this section, a person who makes a request for access to a record under this Act may be required to pay

11. (1) Sous réserve des autres dispositions du présent article, il peut être exigé que la personne qui fait la demande acquitte les droits suivants :

Frais de communication

(*a*) at the time the request is made, such application fee, not exceeding twenty-five dollars, as may be prescribed by regulation;

a) un versement initial accompagnant la demande et dont le montant, d'un maximum de vingt-cinq dollars, peut être fixé par règlement;

(*b*) before any copies are made, such fee as may be prescribed by regulation reflecting the cost of reproduction calculated in the manner prescribed by regulation; and

b) un versement prévu par règlement et exigible avant la préparation de copies, correspondant aux frais de reproduction;

(*c*) before the record is converted into an alternative format or any copies are made in that format, such fee as may be prescribed by regulation reflecting the cost of the medium in which the alternative format is produced.

c) un versement prévu par règlement, exigible avant le transfert, ou la production de copies, du document sur support de substitution et correspondant au coût de support de substitution.

Additional payment

(2) The head of a government institution to which a request for access to a record is made under this Act may require, in addition to the fee payable under paragraph (1)(*a*), payment of an amount, calculated in the manner prescribed by regulation, for every hour in excess of five hours that is reasonably required to search for the record or prepare any part of it for disclosure, and may require that the payment be made before access to the record is given.

Supplément

(2) Le responsable de l'institution fédérale à qui la demande est faite peut en outre exiger, avant de donner communication ou par la suite, le versement d'un montant déterminé par règlement, s'il faut plus de cinq heures pour rechercher le document ou pour en prélever la partie communicable.

Where a record is produced from a machine readable record

(3) Where a record requested under this Act is produced as a result of the request from a machine readable record under the control of a government institution, the head of the institution may require payment of an amount calculated in the manner prescribed by regulation.

Document issu d'un document informatisé

(3) Dans les cas où le document demandé ne peut être préparé qu'à partir d'un document informatisé qui relève d'une institution fédérale, le responsable de l'institution peut exiger le versement d'un montant déterminé par règlement.

Deposit

(4) Where the head of a government institution requires payment of an amount under subsection (2) or (3) in respect of a request for a record, the head of the institution may require that a reasonable proportion of that amount be paid as a deposit before the search or production of the record is

Acompte

(4) Dans les cas prévus au paragraphe (2) ou (3), le responsable d'une institution fédérale peut exiger une partie raisonnable du versement additionnel avant que ne soient effectuées la recherche ou la préparation du document ou que la partie communicable n'en soit prélevée.

undertaken or the part of the record is prepared for disclosure.

Notice

(5) Where the head of a government institution requires a person to pay an amount under this section, the head of the institution shall

(*a*) give written notice to the person of the amount required; and

(*b*) state in the notice that the person has a right to make a complaint to the Information Commissioner about the amount required.

Avis

(5) Dans les cas où sont exigés les versements prévus au présent article, le responsable de l'institution fédérale :

a) avise par écrit la personne qui a fait la demande du versement exigible;

b) l'informe, par le même avis, qu'elle a le droit de déposer une plainte à ce propos auprès du Commissaire à l'information.

Waiver

(6) The head of a government institution to which a request for access to a record is made under this Act may waive the requirement to pay a fee or other amount or a part thereof under this section or may refund a fee or other amount or a part thereof paid under this section.

Dispense

(6) Le responsable de l'institution fédérale peut dispenser en tout ou en partie la personne qui fait la demande du versement des droits ou lui rembourser tout ou partie du montant déjà versé.

Legislative History

1980-81-82-83, c. 111, Sch. I "11"; 1992, c. 21, s. 2.

Historique

1980-81-82-83, ch. 111, ann. I «11»; 1984, ch. 40, art. 79; 1992, ch. 21, art. 2.

Recommended Change: Amend section 11 and consequent regulatory power to provide a sensible modern way of charging for electronic information which form part of an access request.

Changement recommandé : Que l'article 11 et les pouvoirs réglementaires qui en découlent soient modifiés afin d'établir une façon logique et moderne de percevoir des droits pour l'information électronique communiquée dans le cadre d'une demande d'accès à l'information.

Recommended Change: That the strategy in regard to an application fee should be to have it rescinded but if this is not possible then an application fee should buy the current five hours of free service for non-commercial requests. A reasonable compromise might be a $15.00 application fee, which buys the five free hours and fifty pages of

Changement recommandé : Que la stratégie relative à la perception de droits sur présentation de la demande soit de les abolir, mais, si cela se révèle impossible, que ces droits assurent à ceux qui présentent des demandes non commerciales les cinq heures de service gratuit actuellement

photocopying or some other appropriate amount of other copies.

Recommended Change: That section 11 be amended to include criteria for deciding when a request is commercial in nature and provision made for dealing with such requests, including alternative processing; special fee structures more reflective of actual costs; an estimate of costs; payment of a deposit and regulatory power to set detailed rates and procedures.

Recommended Change: That fee waiver criteria be incorporated in this provision of the Act.

Recommended Change: That the Information Commissioner be given the power to make binding orders in regard to fee waiver decisions.

Recommended Change: That the Act be amended to permit institutions to enter into an agreement with the Treasury Board to retain all or part of the fees they collect and apply them to improving the access program.

prévues par la Loi. Une solution de compromis raisonnable serait des droits de demande de 15 $ garantissant cinq heures de service gratuit et cinquante pages de photocopies (ou une quantité jugée suffisante d'autres copies).

Changement recommandé : Que l'article 11 soit modifié de façon à inclure des critères permettant de décider si une demande est de nature commerciale et à prévoir des procédures de réponse aux demandes de ce genre, y compris d'autres modes de traitement, des tarifs correspondant davantage aux coûts réels de production des renseignements, une estimation des coûts et le versement d'un dépôt, ainsi qu'à donner au Commissaire le pouvoir de fixer par règlement des tarifs et des procédures détaillés.

Changement recommandé : Que des critères de dispense du versement des droits soient incorporés dans cet article de la Loi.

Changement recommandé : Que le Commissaire à l'information soit investi du pouvoir de rendre des ordonnances exécutoires à l'égard des décisions de dispense du versement des droits.

Changement recommandé : Que la Loi soit modifiée de façon à autoriser les institutions à conclure avec le Conseil du Trésor une entente qui leur permettrait de conserver tout ou partie des droits qu'elles perçoivent et de se servir des sommes recueillies pour améliorer leurs programmes d'accès à l'information.

Access

Exercice de l'accès

Access to record

12. (1) A person who is given access to a record or a part thereof under this Act shall, subject to the regulations, be given an opportunity to examine the record or part thereof or be given a copy thereof.

Communication

12. (1) L'accès aux documents s'exerce, sous réserve des règlements, par consultation totale ou partielle du document ou par délivrance de copies totales ou partielles.

Language of access

(2) Where access to a record or a part thereof is to be given under this Act and the person to whom access is to be given requests that access be given in a particular official language, a copy of the record or part thereof shall be given to the person in that language

(*a*) forthwith, if the record or part thereof already exists under the control of a government institution in that language; or

(*b*) within a reasonable period of time, if the head of the government institution that has control of the record considers it to be in the public interest to cause a translation to be prepared.

Version de la communication

(2) La personne à qui sera donnée communication totale ou partielle d'un document et qui a précisé la langue officielle dans laquelle elle le désirait se verra communiquer le document ou la partie en cause dans la version de son choix :

a) immédiatement, si le document ou la partie en cause existent dans cette langue et relèvent d'une institution fédérale;

b) dans un délai convenable, si le responsable de l'institution fédérale dont relève le document juge dans l'intérêt public de faire traduire ce document ou cette partie.

Access to record in alternative format

(3) Where access to a record or a part thereof is to be given under this Act and the person to whom access is to be given has a sensory disability and requests that access be given in an alternative format, a copy of the record or part thereof shall be given to the person in an alternative format

(*a*) forthwith, if the record or part thereof already exists under the control of a government institution in an alternative format that is acceptable to that person; or

(*b*) within a reasonnable period of time, if the head of the

Communication sur support de substitution

(3) La personne ayant une déficience sensorielle à qui est donné communication totale ou partielle d'un document et qui a demandé qu'elle lui soit faite sur un support de substitution se fait communiquer copie du document ou de la partie en cause sur un tel support:

a) immédiatement, si le document ou la partie en cause existe déjà sur un support de substitution qui lui soit acceptable et relève d'une institution fédérale;

b) dans un délai convenable, si le responsable de l'institution

government institution that has control of the record considers the giving of access in an alternative format to be necessary to enable the person to exercise the person's right of access under this Act and considers it reasonable to cause that record or part thereof to be converted.

Legislative History

1980-81-82-83, c. 111, Sch. I "12"; R.S., 1985, c. A-1, s. 12; R.S., 1985, c. 31 (4th Supp.), s. 100(E); 1992, c. 21, s. 3.

Recommended Change: That section 12 be modernized to permit access and charging mechanisms for information in other than traditional formats (including alternative formats for the handicapped) and also be amended to read "access to information in records".

fédérale dont relève le document estime que la communication sur un support de substitution est nécessaire pour que la personne puisse exercer ses droits et qu'il est raisonnable de transférer le document ou la partie en cause sur un tel support.

Historique

1980-81-82-83, ch. 111, ann. I «12»; L.R. (1985), ch. A-1, art. 12; L.R. (1985), ch. 31 (4e suppl.), art. 100(A); 1992, ch. 21, art. 3.

Changement recommandé : Que l'article 12 soit modernisé de façon à ce qu'il soit possible d'avoir accès aux modes de communication de renseignements différents des modes traditionnels (y compris les types de présentation conçus expressément pour les personnes handicapées), et qu'il soit modifié aussi par substitution au paragraphe (1) de l'expression «aux renseignements contenus dans les documents» à «aux documents», avec les autres modifications qui en découlent.

EXEMPTIONS

Responsibilities of Government

Recommended Change: That all exceptions under the Act, with the exception of section 19, paragraph 20(1)(a), and any new dealing with Cabinet confidences, be discretionary in nature and injuri-based.

Recommended Observation: That the degree of injury in exceptions not be altered in any reform process.

Recommended Change: Provide a principle statement that indicates

EXCEPTIONS

Responsabilités de l'État

Changement recommandé : Que toutes les exceptions prévues par la Loi, sauf celles qui sont prévues par l'article 19, l'alinéa 20(1)a) et par toute nouvelle disposition sur les documents confidentiels du Cabinet soient de nature discrétionnaire et fondées sur le critère du préjudice.

Observation recommandée : Que le degré du préjudice invoqué pour justifier des exceptions ne soit pas modifié par une réforme quelconque.

that the public interest is paramount where records reveal a grave environmental, health or safety hazard to the public on the model of the Ontario legislation.

Recommended Change: Again following the Ontario model, provide a specific public interest override for section 21 (advice); section 13 (information obtained in confidence from other governments); section 14 (federal-provincial affairs); section 17 (safety of individuals); section 18 (economic interests of government); section 22 (tests and audits); section 23 (solicitor-client privilege) and section 24 (statutory prohibitions). The public interest should be in protection of public health, public safety, the environment, law enforcement, the administration of justice and national defence and security.

Recommended Change: Add a general provision at the beginning of the exemptions section of the Act which obliges heads of institutions to use their discretion in favour of access and openness as opposed to refusal.

Recommended Change: That the Act be amended to establish a separate regime for public opinion research which would require government institutions to list all such research within two months (60 days) of a project being undertaken and to release the results when requested informally to do so. Within the two month period, requests could be refused much in the same way as section 26, preparing a publication, currently operates.

Changement recommandé : Que soit ajouté à la Loi un énoncé de principe précisant que l'intérêt public prime dans les cas où les documents révèlent l'existence d'un grand danger pour le public en matière d'environnement, de santé ou de sécurité, conformément à la loi ontarienne.

Changement recommandé : Toujours conformément à la loi ontarienne, que la Loi contienne une disposition expresse reconnaissant la primauté de l'intérêt public dans le cas des articles 21 (avis), 13 (renseignements obtenus à titre confidentiel d'autres gouvernements), 14 (affaires fédéro-provinciales), 17 (sécurité des individus), 18 (intérêts économiques du Canada), 22 (examens et vérification), 23 (secret professionnel des avocats) et 24 (interdictions fondées sur d'autres lois). L'intérêt public devrait s'appliquer à des questions de protection de la santé et de la sécurité publiques, d'environnement, d'application de la loi et d'administration de la justice, ainsi que de défense et de sécurité nationales.

Changement recommandé : Que soit ajoutée au début de la partie des exceptions de la Loi une disposition de portée générale obligeant les responsables d'institutions à se servir de leur pouvoir discrétionnaire de façon à privilégier l'accès et l'ouverture plutôt que le refus.

Changement recommandé : Que la Loi soit modifiée de façon à ce que la recherche sur l'opinion publique fasse l'objet d'un régime distinct obligeant les institutions gouvernementales à inscrire toutes ces recherches sur une liste dans les

Recommended Observation: That the Information Commissioner advocate and support the creation of a public repository for the results of public opinion research, preferably at a Canadian university.

deux mois (60 jours) de leur début et d'en communiquer les résultats dès qu'elles reçoivent une demande officieuse de le faire. Pendant ce délai de deux mois, les demandes d'accès pourraient être rejetées pour des motifs analogues à ceux qui sont invoqués en vertu de l'article 26 (en cours de publication).

Observation recommandée : Que le Commissaire à l'information propose et appuie l'idée de la création d'un dépôt public des résultats des recherches sur l'opinion publique, de préférence dans une université canadienne.

Information obtained in confidence

13. (1) Subject to subsection (2), the head of a government institution shall refuse to disclose any record requested under this Act that contains information that was obtained in confidence from

(*a*) the government of a foreign state or an institution thereof;

(*b*) an international organization of states or an institution thereof;

(*c*) the government of a province or an institution thereof; or

(*d*) a municipal or regional government established by or pursuant to an Act of the legislature of a province or an institution of such a government.

Renseignements obtenus à titre confidentiel

13. (1) Sous réserve du paragraphe (2), le responsable d'une institution fédérale est tenu de refuser la communication de documents contenant des renseignements obtenus à titre confidentiel :

a) des gouvernements des États étrangers ou de leurs organismes;

b) des organisations internationales d'États ou de leurs organismes;

c) des gouvernements des provinces ou de leurs organismes;

d) des administrations municipales ou régionales constituées en vertu de lois provinciales ou de leurs organismes.

Where disclosure authorized

(2) The head of a government institution may disclose any record requested under this Act that contains information described in subsection (1) if the government, organization or institution from which the information was obtained

Cas où la divulgation est autorisée

(2) Le responsable d'une institution fédérale peut donner communication de documents contenant des renseignements visés au paragraphe (1) si le gouvernement, l'organisation,

(*a*) consents to the disclosure; or

(*b*) makes the information public.

Legislative History
1980-81-82-83, c. 111, Sch. I "13".

Recommended Change: Section 13 should be amended to include the institutions or governments of components of foreign states and self-governing native bands.

Recommended Observation: The Information Commissioner should either request the government to undertake a study or mandate one himself to study the feasibility of making section 13 a discretionary, injury-based exemption in relation to the confidences of international organizations and foreign states.

Recommended Change: Section 13 should be amended to make it a discretionary, injury-based exemption for provinces, municipalities, self-governing native bands and any other government entities in Canada.

Recommended Change: Section 13 should be incorporated into the public interest override.

Recommended Change: Section 13 should be amended to have the confidence end 15 years after the date on the record, except for those records relating to law enforcement and security and intelligence.

l'administration ou l'organisme qui les a fournis :

a) consent à la communication;

b) rend les renseignements publics.

Historique
1980-81-82-83, ch. 111, ann. I «13».

Changement recommandé : Que la portée de l'article 13 soit élargie pour englober les institutions ou les gouvernements des instances secondaires des pays étrangers et les bandes autochtones qui se gouvernent elles-mêmes.

Observation recommandée : Que le Commissaire à l'information demande au gouvernement d'entreprendre une étude ou qu'il en entreprenne une lui-même pour étudier la faisabilité de prévoir à l'article 13 une exception discrétionnaire fondée sur le critère du préjudice, dans le cas des renseignements confidentiels obtenus des organisations internationales et des États étrangers.

Changement recommandé : Que l'article 13 soit modifié de façon à prévoir une exception discrétionnaire fondée sur le critère du préjudice à l'égard des renseignements confidentiels obtenus des provinces, des municipalités, des bandes autochtones qui se gouvernent elles-mêmes et de toutes les autres instances gouvernementales du Canada.

Changement recommandé : Que le principe de primauté de l'intérêt public s'applique à l'article 13.

Changement recommandé : Que l'article 13 soit modifié pour que la période d'exemption des documents confidentiels soit ramenée à 15 ans après la date figurant sur lesdits documents, sauf pour ceux qui ont trait à l'application de la loi et à des questions de sécurité et de renseignement.

Federal-provincial affairs

14. The head of a government institution may refuse to disclose any record requested under this Act that contains information the disclosure of which could reasonably be expected to be injurious to the conduct by the Government of Canada of federal-provincial affairs, including, without restricting the generality of the foregoing, any such information

(*a*) on federal-provincial consultations or deliberations; or

(*b*) on strategy or tactics adopted or to be adopted by the Government of Canada relating to the conduct of federal-provincial affairs.

Legislative History
1980-81-82-83, c. 111, Sch. I "14".

Recommended Change: Section 14 should be amended to replace the word "affairs" with "negociations".

Recommended Change: Section 14 should be incorporated into the public interest override provision.

Affaires fédéro-provinciales

14. Le responsable d'une institution fédérale peut refuser la communication de documents contenant des renseignements dont la divulgation risquerait vraisemblablement de porter préjudice à la conduite par le gouvernement du Canada des affaires fédéro-provinciales, notamment des renseignements sur :

a) des consultations ou délibérations fédéro-provinciales;

b) les orientations ou mesures adoptées ou à adopter par le gouvernement du Canada touchant la conduite des affaires fédéro-provinciales.

Historique
1980-81-82-83, ch. 111, ann. I «14».

Changement recommandé : Que l'article 14 soit modifié par la substitution du mot «négociations» au mot «affaires».

Changement recommandé : Que le principe de primauté de l'intérêt public s'applique à l'article 14.

International affairs and defence

15. (1) The head of a government institution may refuse to disclose any record requested under this Act that contains information the disclosure of which could reasonably be expected to be injurious to the

Affaires internationales et défense

15. (1) Le responsable d'une institution fédérale peut refuser la communication de documents contenant des renseignements dont la divulgation risquerait vraisemblablement de porter

conduct of international affairs, the defence of Canada or any state allied or associated with Canada or the detection, prevention or suppression of subversive or hostile activities, including, without restricting the generality of the foregoing, any such information

(*a*) relating to military tactics or strategy, or relating to military exercises or operations undertaken in preparation for hostilities or in connection with the detection, prevention or suppression of subversive or hostile activities;

(*b*) relating to the quantity, characteristics, capabilities or deployment of weapons or other defence equipment or of anything being designed, developed, produced or considered for use as weapons or other defence equipment;

(*c*) relating to the characteristics, capabilities, performance, potential, deployment, functions or role of any defence establishment, of any military force, unit or personnel or of any organization or person responsible for the detection, prevention or suppression of subversive or hostile activities;

(*d*) obtained or prepared for the purpose of intelligence relating to

(i) the defence of Canada or any state allied or associated with Canada, or

(ii) the detection, prevention or suppression of subversive or hostile activities;

préjudice à la conduite des affaires internationales, à la défense du Canada ou d'États alliés ou associés avec le Canada ou à la détection, à la prévention ou à la répression d'activités hostiles ou subversives, notamment :

a) des renseignements d'ordre tactique ou stratégique ou des renseignements relatifs aux manoeuvres et opérations destinées à la préparation d'hostilités ou entreprises dans le cadre de la détection, de la prévention ou de la répression d'activités hostiles ou subversives;

b) des renseignements concernant la quantité, les caractéristiques, les capacités ou le déploiement des armes ou des matériels de défense, ou de tout ce qui est conçu, mis au point, produit ou prévu à ces fins;

c) des renseignements concernant les caractéristiques, les capacités, le rendement, le potentiel, le déploiement, les fonctions ou le rôle des établissements de défense, des forces, unités ou personnels militaires ou des personnes ou organisations chargées de la détection, de la prévention ou de la répression d'activités hostiles ou subversives;

d) des éléments d'information recueillis ou préparés aux fins du renseignement relatif à :

(i) la défense du Canada ou d'États alliés ou associés avec le Canada,

(*e*) obtained or prepared for the purpose of intelligence respecting foreign states, international organizations of states or citizens of foreign states used by the Government of Canada in the process of deliberation and consultation or in the conduct of international affairs;

(*f*) on methods of, and scientific or technical equipment for, collecting, assessing or handling information referred to in paragraph (*d*) or (*e*) or on sources of such information;

(*g*) on the positions adopted or to be adopted by the Government of Canada, governments of foreign states or international organizations of states for the purpose of present or future international negotiations;

(*h*) that constitutes diplomatic correspondence exchanged with foreign states or international organizations of states or official correspondence exchanged with Canadian diplomatic missions or consular posts abroad; or

(*i*) relating to the communications or cryptographic systems of Canada or foreign states used

(i) for the conduct of international affairs,

(ii) for the defence of Canada or any state allied or associated with Canada, or

(iii) in relation to the detection, prevention or suppression of subversive or hostile activities.

e) des éléments d'information recueillis ou préparés aux fins du renseignement relatif aux États étrangers, aux organisations internationales d'États ou aux citoyens étrangers et utilisés par le gouvernement du Canada dans le cadre de délibérations ou consultations ou dans la conduite des affaires internationales;

f) des renseignements concernant les méthodes et le matériel technique ou scientifique de collecte, d'analyse ou de traitement des éléments d'information visés aux alinéas *d*) et *e*), ainsi que des renseignements concernant leurs sources;

g) des renseignements concernant les positions adoptées ou envisagées, dans le cadre de négociations internationales présentes ou futures, par le gouvernement du Canada, les gouvernements d'États étrangers ou les organisations internationales d'États;

h) des renseignements contenus dans la correspondance diplomatique échangée avec des États étrangers ou des organisations internationales d'États, ou dans la correspondance officielle échangée avec des missions diplomatiques ou des postes consulaires canadiens;

i) des renseignements relatifs à ceux des réseaux de communications et des procédés de cryptographie du Canada ou d'États étrangers qui sont utilisés dans les buts suivants :

(i) la conduite des affaires internationales,

(ii) la défense du Canada ou d'États alliés ou associés avec le Canada,

(iii) la détection, la prévention ou la répression d'activités hostiles ou subversives.

Definitions

(2) In this section,

"defence of Canada or any state allied or associated with Canada" «défense...»

"defence of Canada or any state allied or associated with Canada" includes the efforts of Canada and of foreign states toward the detection, prevention or suppression of activities of any foreign state directed toward actual or potential attack or other acts of aggression against Canada or any state allied or associated with Canada;

Définitions

(2) Les définitions qui suivent s'appliquent au présent article.

«activités hostiles ou subversives» "subversive..."

«activités hostiles ou subversives»

a) L'espionnage dirigé contre le Canada ou des États alliés ou associés avec le Canada;

b) le sabotage;

c) les activités visant la perpétration d'actes de terrorisme, y compris les détournements de moyens de transport, contre le Canada ou un État étranger ou sur leur territoire;

d) les activités visant un changement de gouvernement au Canada ou sur le territoire d'États étrangers par l'emploi de moyens criminels, dont la force ou la violence, ou par l'incitation à l'emploi de ces moyens;

e) les activités visant à recueillir des éléments d'information aux fins du renseignement relatif au Canada ou aux États qui sont alliés ou associés avec lui;

f) les activités destinées à menacer, à l'étranger, la sécurité des citoyens ou des fonctionnaires fédéraux canadiens ou à mettre en

danger des biens fédéraux situés à l'étranger.

"subversive or hostile activities" «activités...»

"subversive or hostile activities" means

(*a*) espionage against Canada or any state allied or associated with Canada,

(*b*) sabotage,

(*c*) activities directed toward the commission of terrorist acts, including hijacking, in or against Canada or foreign states,

(*d*) activities directed toward accomplishing government change within Canada or foreign states by the use of or the encouragement of the use of force, violence or any criminal means,

(*e*) activities directed toward gathering information used for intelligence purposes that relates to Canada or any state allied or associated with Canada, and

(*f*) activities directed toward threatening the safety of Canadians, employees of the Government of Canada or property of the Government of Canada outside Canada.

Legislative History
1980-81-82-83, c. 111, Sch. I "15".

Recommended Change: That section 15 be amended to clarify that the classes of information listed are merely illustrations of possible injuries; the overriding issue should remain whether there is an injury to an identified state interest which is

«défense du Canada ou d'États alliés ou associés avec le Canada» Sont assimilés à la défense du Canada ou d'États alliés ou associés avec le Canada les efforts déployés par le Canada et des États étrangers pour détecter, prévenir ou réprimer les activités entreprises par des États étrangers en vue d'une attaque réelle ou éventuelle ou de la perpétration d'autres actes d'agression contre le Canada ou des États alliés ou associés avec le Canada.

«défense du Canada ou d'États alliés ou associés avec le Canada» "defence..."

Historique
1980-81-82-83, ch. 111, ann. I «15».

Changement recommandé : Que l'article 15 soit modifié afin de préciser que les catégories de renseignements qui sont énumérées ne sont que des exemples des documents, renseignements ou éléments d'information dont la divulgation peut entraîner un préjudice; le principal critère devrait être de déterminer si la divulgation risque de porter préjudice à un intérêt de l'État analogue à ceux qui sont énumérés dans l'article.

analogous to those sorts of state interest listed in the exemption.

Law enforcement and investigations

16. (1) The head of a government institution may refuse to disclose any record requested under this Act that contains

(*a*) information obtained or prepared by any government institution, or part of any government institution, that is an investigative body specified in the regulations in the course of lawful investigations pertaining to

(i) the detection, prevention or suppression of crime,

(ii) the enforcement of any law of Canada or a province, or

(iii) activities suspected of constituting threats to the security of Canada within the meaning of the *Canadian Security Intelligence Service Act*,

if the record came into existence less than twenty years prior to the request;

(*b*) information relating to investigative techniques or plans for specific lawful investigations;

(*c*) information the disclosure of which could reasonably be expected to be injurious to the enforcement of any law of Canada or a province or the conduct of lawful investigations, including, without restricting the generality of the foregoing, any such information

Enquêtes

16. (1) Le responsable d'une institution fédérale peut refuser la communication de documents :

a) datés de moins de vingt ans lors de la demande et contenant des renseignements obtenus ou préparés par une institution fédérale, ou par une subdivision d'une institution, qui constitue un organisme d'enquête déterminé par règlement, au cours d'enquêtes licites ayant trait :

(i) à la détection, la prévention et la répression du crime,

(ii) aux activités destinées à faire respecter les lois fédérales ou provinciales,

(iii) aux activités soupçonnées de constituer des menaces envers la sécurité du Canada au sens de la *Loi sur le Service canadien du renseignement de sécurité*;

b) contenant des renseignements relatifs à des techniques d'enquêtes ou à des projets d'enquêtes licites déterminées;

c) contenant des renseignements dont la divulgation risquerait vraisemblablement de nuire aux activités destinées à faire respecter les lois fédérales ou provinciales ou au déroulement d'enquêtes licites, notamment :

(i) des renseignements relatifs à l'existence ou à la nature d'une enquête déterminée,

(i) relating to the existence or nature of a particular investigation,

(ii) that would reveal the identity of a confidential source of information, or

(iii) that was obtained or prepared in the course of an investigation; or

(*d*) information the disclosure of which could reasonably be expected to be injurious to the security of penal institutions.

(ii) des renseignements qui permettraient de remonter à une source de renseignements confidentielle,

(iii) des renseignements obtenus ou préparés au cours d'une enquête;

d) contenant des renseignements dont la divulgation risquerait vraisemblablement de nuire à la sécurité des établissements pénitentiaires.

Security

(2) The head of a government institution may refuse to disclose any record requested under this Act that contains information that could reasonably be expected to facilitate the commission of an offence, including, without restricting the generality of the foregoing, any such information

(*a*) on criminal methods or techniques;

(*b*) that is technical information relating to weapons or potential weapons; or

(*c*) on the vulnerability of particular buildings or other structures or systems, including computer or communication systems, or methods employed to protect such buildings or other structures or systems.

Méthodes de protection, etc.

(2) Le responsable d'une institution fédérale peut refuser la communication de documents contenant des renseignements dont la communication risquerait vraisemblablement de faciliter la perpétration d'infractions, notamment :

a) des renseignements sur les méthodes ou techniques utilisées par les criminels;

b) des renseignements techniques concernant des armes actuelles ou futures;

c) des renseignements portant sur la vulnérabilité de certains bâtiments ou ouvrages ou de réseaux ou systèmes divers, y compris des réseaux ou systèmes informatisés ou de communications, ou portant sur les méthodes employées pour leur protection.

Policing services for provinces or municipalities

(3) The head of a government institution shall refuse to disclose any record requested under this Act that contains information that was obtained or prepared by the Royal

Fonctions de police provinciale ou municipale

(3) Le responsable d'une institution fédérale est tenu de refuser la communication des documents contenant des renseignements obtenus ou préparés par la Gendarmerie

Canadian Mounted Police while performing policing services for a province or municipality pursuant to an arrangement made under section 20 of the *Royal Canadian Mounted Police Act*, where the Government of Canada has, on the request of the province or municipality agreed not to disclose such information.

royale du Canada, dans l'exercice de fonctions de police provinciale ou municipale qui lui sont conférées par une entente conclue sous le régime de l'article 20 de la *Loi sur la Gendarmerie royale du Canada*, si, à la demande de la province ou de la municipalité, le gouvernement du Canada a consenti à ne pas divulguer ces renseignements.

Definition of "investigation"

(4) For the purposes of paragraphs (1)(*b*) and (*c*), "investigation" means an investigation that

(*a*) pertains to the administration or enforcement of an Act of Parliament;

(*b*) is authorized by or pursuant to an Act of Parliament; or

(*c*) is within a class of investigations specified in the regulations.

Legislative History
1980-81-82-83, c. 111, Sch. I "16"; 1984, c. 21, s. 70.

Recommended Change: Amend section 16 to introduce an injury test into paragraphs 16(1)(a) *and* (b).

Définition de «enquête»

(4) Pour l'application des alinéas (1)*b*) et *c*), «enquête» s'entend de celle qui :

a) se rapporte à l'application d'une loi fédérale;

b) est autorisée sous le régime d'une loi fédérale;

c) fait partie d'une catégorie d'enquêtes précisée dans les règlements.

Historique
1980-81-82-83, ch. 111, ann. I «16»; 1984, ch. 21, art. 70.

*Changement recommandé : Que l'article 16 soit modifié pour que le critère du préjudice s'applique aux alinéas 16(1)*a) *et* b).

Safety of individuals

17. The head of a government institution may refuse to disclose any record requested under this Act that contains information the disclosure of which could reasonably be expected to threaten the safety of individuals.

Legislative History
1980-81-82-83, c. 111, Sch. I "17".

Recommended Change: That section 17 be amended to

Sécurité des individus

17. Le responsable d'une institution fédérale peut refuser la communication de documents contenant des renseignements dont la divulgation risquerait vraisemblablement de nuire à la sécurité des individus.

Historique
1980-81-82-83, ch. 111, ann. I «17».

Changement recommandé : Que l'article 17 soit modifié de façon à

incorporate the words "mental or physical health" into the threat to an individual's safety.

Recommended Change: That section 17 be subject to the public interest override.

englober la notion de santé mentale ou physique dans celle de danger pour la sécurité des individus.

Changement recommandé : Que le critère de primauté de l'intérêt public s'applique à l'article 17.

Economic interests of Canada

18. The head of a government institution may refuse to disclose any record requested under this Act that contains

(*a*) trade secrets or financial, commercial, scientific or technical information that belongs to the Government of Canada or a government institution and has substantial value or is reasonably likely to have substantial value;

(*b*) information the disclosure of which could reasonably be expected to prejudice the competitive position of a government institution;

(*c*) scientific or technical information obtained through research by an officer or employee of a government institution, the disclosure of which could reasonably be expected to deprive the officer or employee of priority of publication; or

(*d*) information the disclosure of which could reasonably be expected to be materially injurious to the financial interests of the Government of Canada or the ability of the Government of Canada to manage the economy of Canada or could reasonably be expected to result in an undue benefit to any person, including, without restricting the generality of the foregoing, any such information relating to

Intérêts économiques du Canada

18. Le responsable d'une institution fédérale peut refuser la communication de documents contenant :

a) des secrets industriels ou des renseignements financiers, commerciaux, scientifiques ou techniques appartenant au gouvernement du Canada ou à une institution fédérale et ayant une valeur importante ou pouvant vraisemblablement en avoir une;

b) des renseignements dont la divulgation risquerait vraisemblablement de nuire à la compétitivité d'une institution fédérale;

c) des renseignements techniques ou scientifiques obtenus grâce à des recherches par un cadre ou employé d'une institution fédérale et dont la divulgation risquerait vraisemblablement de priver cette personne de sa priorité de publication;

d) des renseignements dont la divulgation risquerait vraisemblablement de porter un préjudice appréciable aux intérêts financiers du gouvernement du Canada ou à sa capacité de gérer l'économie du pays, ainsi que ceux dont la divulgation risquerait vraisemblablement de causer des avantages injustifiés à une personne.

(i) the currency, coinage or legal tender of Canada,

(ii) a contemplated change in the rate of bank interest or in government borrowing,

(iii) a contemplated change in tariff rates, taxes, duties or any other revenue source,

(iv) a contemplated change in the conditions of operation of financial institutions,

(v) a contemplated sale or purchase of securities or of foreign or Canadian currency, or

(vi) a contemplated sale or acquisition of land or property.

Legislative History
1980-81-82-83, c. 111, Sch. I "18".

Recommended Change: Section 18 should be amended so that it could not be used to withhold the results of product or environmental testing done by the government on its own activities.

Recommended Change: Paragraph 18(a) should be amended to narrow the term "substantial value", relating to government trade secrets and financial, commercial, scientific and technical information, to "substantial monetary value".

Recommended Change: Section 18 should be adjusted to protect the "confidential business" information of Special Operating Agencies.

Ces renseignements peuvent notamment porter sur :

(i) la monnaie canadienne, son monnayage ou son pouvoir libératoire,

(ii) les projets de changement du taux d'intérêt bancaire ou du taux d'emprunt du gouvernement,

(iii) les projets de changement des taux tarifaires, des taxes, impôts ou droits ou des autres sources de revenu,

(iv) les projets de changement dans le mode de fonctionnement des institutions financières,

(v) les projets de vente ou d'achat de valeurs mobilières ou de devises canadiennes ou étrangères,

(vi) les projets de vente ou d'acquisition de terrains ou autres biens.

Historique
1980-81-82-83, ch. 111, ann. I «18».

Changement recommandé : Que l'article 18 soit modifié de façon à ce qu'il ne puisse pas être invoqué pour justifier le refus de communiquer les résultats des essais de produits ou des essais environnementaux réalisés par le gouvernement à l'égard de ses propres activités.

Changement recommandé : Que l'alinéa 18a) soit modifié de façon à limiter la portée de l'expression «valeur importante», dans la mesure où elle s'applique aux secrets

Recommended Change: That section 18 be subject to the public interest override provision.

industriels ou aux renseignements financiers, commerciaux, scientifiques ou techniques appartenant au gouvernement, par ajout de l'adjectif «monétaire» entre les mots «valeur» et «importante».

Changement recommandé : Que l'article 18 soit modifié de façon à protéger les renseignements commerciaux de nature confidentielle des organismes de services spéciaux.

Changement recommandé : Que le principe de primauté de l'intérêt public s'applique à l'article 18.

Personal Information

Renseignements personnels

Personal information

19. (1) Subject to subsection (2), the head of a government institution shall refuse to disclose any record requested under this Act that contains personal information as defined in section 3 of the *Privacy Act*.

Renseignements personnels

19. (1) Sous réserve du paragraphe (2), le responsable d'une institution fédérale est tenu de refuser la communication de documents contenant les renseignements personnels visés à l'article 3 de la *Loi sur la protection des renseignements personnels*.

Where disclosure authorized

(2) The head of a government institution may disclose any record requested under this Act that contains personal information if

(*a*) the individual to whom it relates consents to the disclosure;

(*b*) the information is publicly available; or

(*c*) the disclosure is in accordance with section 8 of the *Privacy Act*.

Cas où la divulgation est autorisée

(2) Le responsable d'une institution fédérale peut donner communication de documents contenant des renseignements personnels dans les cas où :

a) l'individu qu'ils concernent y consent;

b) le public y a accès;

c) la communication est conforme à l'article 8 de la *Loi sur la protection des renseignements personnels*.

Legislative History
1980-81-82-83, c. 111, Sch. I "19".

Historique
1980-81-82-83, ch. 111, ann. I «19».

Recommended Observation: The information Commissioner should only advocate an unwarranted invasion of privacy test for the release of personal information as has been adopted in the Ontario and B.C. legislation if he believes it essential that more personnel information needs to be released as a result of ATI requests.

Recommended Observation: Leave the public interest disclosure mechanism for personal information within the purview of the Privacy Act.

Observation recommandée : Que le Commissaire à l'information ne préconise l'adoption d'un critère d'invasion injustifié de la vie privée pour autoriser la divulgation de renseignements personnels comme celui que l'Ontario et la Colombie-Britannique ont retenus que s'il estime indispensable une divulgation accrue de ces renseignements par suite de demandes d'accès à l'information.

Observation recommandée : Que le mécanisme de divulgation des renseignements personnels pour des raisons d'intérêt public continue à relever de la Loi sur la protection des renseignements personnels.

Third Party Information

Renseignements de tiers

Third party information

20. (1) Subject to this section, the head of a government institution shall refuse to disclose any record requested under this Act that contains

(*a*) trade secrets of a third party;

(*b*) financial, commercial, scientific or technical information that is confidential information supplied to a government institution by a third party and is treated consistently in a confidential manner by the third party;

(*c*) information the disclosure of which could reasonably be expected to result in material financial loss or gain to, or could reasonably be expected to prejudice the competitive position of, a third party; or

Renseignements de tiers

20. (1) Le responsable d'une institution fédérale est tenu, sous réserve des autres dispositions du présent article, de refuser la communication de documents contenant :

a) des secrets industriels de tiers;

b) des renseignements financiers, commerciaux, scientifiques ou techniques fournis à une institution fédérale par un tiers, qui sont de nature confidentielle et qui sont traités comme tels de façon constante par ce tiers;

c) des renseignements dont la divulgation risquerait vraisemblablement de causer des pertes ou profits financiers appréciables à un tiers ou de nuire à sa compétitivité;

(*d*) information the disclosure of which could reasonably be expected to interfere with contractual or other negotiations of a third party.

d) des renseignements dont la divulgation risquerait vraisemblablement d'entraver des négociations menées par un tiers en vue de contrats ou à d'autres fins.

Product or environmental testing

(2) The head of a government institution shall not, pursuant to subsection (1), refuse to disclose a part of a record if that part contains the results of product or environmental testing carried out by or on behalf of a government institution unless the testing was done as a service to a person, a group of persons or an organization other than a government institution and for a fee.

(2) Le paragraphe (1) n'autorise pas le responsable d'une institution fédérale à refuser la communication de la partie d'un document qui donne les résultats d'essais de produits ou d'essais d'environnement effectués par une institution fédérale ou pour son compte, sauf si les essais constituent une prestation de services fournis à titre onéreux mais non destinés à une institution fédérale.

Essais de produits ou essais d'environnement

Methods used in testing

(3) Where the head of a government institution discloses a record requested under this Act, or a part thereof, that contains the results of product or environmental testing, the head of the institution shall at the same time as the record or part thereof is disclosed provide the person who requested the record with a written explanation of the methods used in conducting the tests.

(3) Dans les cas où, à la suite d'une demande, il communique, en tout ou en partie, un document qui donne les résultats d'essais de produits ou d'essais d'environnement, le responsable d'une institution fédérale est tenu d'y joindre une note explicative des méthodes utilisées pour effectuer les essais.

Méthodes utilisées pour les essais

Preliminary testing

(4) For the purposes of this section, the results of product or environmental testing do not include the results of preliminary testing conducted for the purpose of developing methods of testing.

(4) Pour l'application du présent article, les résultats d'essais de produits ou d'essais d'environnement ne comprennent pas les résultats d'essais préliminaires qui ont pour objet la mise au point de méthodes d'essais.

Essais préliminaires

Disclosure if a supplier consents

(5) The head of a government institution may disclose any record that contains information described in subsection (1) with the consent of the third party to whom the information relates.

(5) Le responsable d'une institution fédérale peut communiquer tout document contenant les renseignements visés au paragraphe (1) si le tiers que les renseignements concernent y consent.

Communication autorisée

Disclosure authorized if in public interest

(6) The head of a government institution may disclose any record requested under this Act, or any part thereof, that contains information described in paragraph (1)(*b*), (*c*) or (*d*) if that disclosure would be in the public interest as it relates to public health, public safety or protection of the environment and, if the public interest in disclosure clearly outweighs in importance any financial loss or gain to, prejudice to the competitive position of or interference with contractual or other negotiations of a third party.

Legislative History
1980-81-82-83, c. 111, Sch. I "20".

Recommended Change: That the term "trade secret" should be defined in the Access to Information Act.

Recommended Observation: That the above definition be subjected to legal scrutiny before inclusion in the Act to ensure that it meets the requirements of the strict law in this area.

Recommended Change: Extend the public interest override in subsection 20(6) to cover paragraph 20(1)(a)*, trade secrets.*

Recommended Change: That section 20 be amended to allow substitutional service of notification (e.g. by public notice or advertisement) where this is effective, practical and less costly.

Recommended Change: That section 20 be amended to clarify that third parties bear the onus of proof before the Federal Court when they challenge decisions to disclose

Communication dans l'intérêt public

6) Le responsable d'une institution fédérale peut communiquer, en tout ou en partie, tout document contenant les renseignements visés aux alinéas (1)*b*), *c*) et *d*) pour des raisons d'intérêt public concernant la santé et la sécurité publiques ainsi que la protection de l'environnement; les raisons d'intérêt public doivent de plus justifier nettement les conséquences éventuelles de la communication pour un tiers : pertes ou profits financiers, atteintes à sa compétitivité ou entraves aux négociations qu'il mène en vue de contrats ou à d'autres fins.

Historique
1980-81-82-83, ch. 111, ann. I «20».

Changement recommandé : Que l'expression «secrets industriels» soit définie dans la Loi sur l'accès à l'information.

Observation recommandée : Que la définition susmentionnée fasse l'objet d'un examen juridique avant d'être incorporée dans la Loi, afin de veiller à ce qu'elle satisfasse aux exigences juridiques les plus strictes en la matière.

*Changement recommandé : Que le principe de primauté de l'intérêt public du paragraphe 20(6) soit élargi pour englober les secrets industriels de tiers visés par l'alinéa 20(1)*a).

Changement recommandé : Que l'article 20 soit modifié de façon à autoriser d'autres modes d'avis (p. ex. avis public ou annonce), lorsqu'ils sont efficaces, pratiques et moins coûteux.

records that may contain confidential business information.

Recommended Change: That section 20 be amended to permit protection of information (i) supplied by Indian bands, band associations and tribal councils recognized by the Department of Indian Affairs; and (ii) about Indian band trust accounts which are held by government institutions, but not supplied by the band.

Changement recommandé : Que l'article 20 soit modifié de façon à préciser que la charge de la preuve incombe au tiers quand celui-ci conteste devant la Cour fédérale des décisions de communiquer des documents susceptibles de contenir des renseignements commerciaux confidentiels.

Changement recommandé : Que l'article 20 soit modifié de façon à autoriser la protection des renseignements (i) fournis par les bandes indiennes, les associations de bandes et les conseils tribaux reconnus par le ministère des Affaires indiennes et (ii) relatifs aux comptes en fiducie des bandes indiennes détenus par des institutions gouvernementales, mais pas fournis par lesdites bandes.

Operations of Government

Activités du gouvernement

Advice, etc.

21. (1) The head of a government institution may refuse to disclose any record requested under this Act that contains

(*a*) advice or recommendations developed by or for a government institution or a minister of the Crown,

(*b*) an account of consultations or deliberations involving officers or employees of a government institution, a minister of the Crown or the staff of a minister of the Crown,

(*c*) positions or plans developed for the purpose of negotiations carried on or to be carried on by or on behalf of the

Avis, etc.

21. (1) Le responsable d'une institution fédérale peut refuser la communication de documents datés de moins de vingt ans lors de la demande et contenant :

a) des avis ou recommandations élaborés par ou pour une institution fédérale ou un ministre;

b) des comptes rendus de consultations ou délibérations où sont concernés des cadres ou employés d'une institution fédérale, un ministre ou son personnel;

c) des projets préparés ou des renseignements portant sur des positions envisagées dans le cadre de négociations menées ou à mener par le gouvernement du Canada ou en son nom, ainsi que des

Government of Canada and considerations relating thereto, or

(*d*) plans relating to the management of personnel or the administration of a government institution that have not yet been put into operation,

if the record came into existence less than twenty years prior to the request.

renseignements portant sur les considérations qui y sont liées;

d) des projets relatifs à la gestion du personnel ou à l'administration d'une institution fédérale et qui n'ont pas encore été mis en oeuvre.

Exercise of a discretionary power or an adjudicative function

(2) Subsection (1) does not apply in respect of a record that contains

(*a*) an account of, or a statement of reasons for, a decision that is made in the exercise of a discretionary power or an adjudicative function and that affects the rights of a person; or

(*b*) a report prepared by a consultant or an adviser who was not, at the time the report was prepared, an officer or employee of a government institution or a member of the staff of a minister of the Crown.

Décisions

(2) Le paragraphe (1) ne s'applique pas aux documents contenant :

a) le compte rendu ou l'exposé des motifs d'une décision qui est prise dans l'exercice d'un pouvoir discrétionnaire ou rendue dans l'exercice d'une fonction judiciaire ou quasi-judiciaire et qui touche les droits d'une personne;

b) le rapport établi par un consultant ou conseiller à une époque où il n'appartenait pas au personnel d'une institution fédérale ou d'un ministre.

Legislative History
1980-81-82-83, c. 111, Sch. I "21".

Historique
1980-81-82-83, ch. 111, ann. I «21».

Recommended Change: That section 21 be amended to encompass an injury test.

Changement recommandé : Que l'article 21 soit modifié de façon à ce que le critère du préjudice s'y applique.

Recommended Change: That section 21 be clarified as to the type of sensitive decision-making information it covers and include a listing of those types of documents it specifically does not cover.

Changement recommandé : Que l'article 21 soit modifié pour préciser les types de renseignements délicats relatifs aux processus décisionnels auxquels ils s'appliquent, avec une liste des catégories de documents auxquels ils ne s'appliquent pas.

Recommended Change: That section 21 be amended to reduce the

current time limit on the exemption from 20 to 10 years.

Recommended Change: That section 21 be amended in order to restrict its application to advice and recommendations exchanged among public servants, ministerial staff and Ministers.

Recommended Change: That section 21 be amended to add a definition of advice, perhaps the balanced definition currently in the Treasury Board policy manual.

Recommended Change: That section 21 be incorporated in the public interest override provision.

Recommended Change: That paragraph 21(1)(d) *be amended to exclude rejected plans from the coverage of the exemption.*

Changement recommandé : Que l'article 21 soit modifié de façon à ramener de 20 à 10 ans la période d'exception.

Changement recommandé : Que l'article 21 soit modifié pour limiter sa portée aux avis et aux recommandations échangés entre les fonctionnaires, le personnel ministériel et les ministres.

Changement recommandé : Que l'article 21 soit modifié par l'ajout d'une définition de la notion d'avis, qui pourrait être la définition équilibrée qu'en donne le Manuel du Conseil du Trésor.

Changement recommandé : Que le critère de primauté de l'intérêt public s'applique à l'article 21.

*Changement recommandé : Que l'alinéa 21(1)*d) *soit modifié de façon à ce que l'exception ne s'applique pas aux projets rejetés.*

Testing procedures, tests and audits

22. The head of a government institution may refuse to disclose any record requested under this Act that contains information relating to testing or auditing procedures or techniques or details of specific tests to be given or audits to be conducted if the disclosure would prejudice the use or results of particular tests or audits.

Legislative History
1980-81-82-83, c. 111, Sch. I "22".

Recommended Change: That section 22 be incorporated in the specific public interest override provision.

Examens et vérifications

22. Le responsable d'une institution fédérale peut refuser la communication de documents contenant des renseignements relatifs à certaines opérations -- essais, épreuves, examens, vérifications --, ou aux méthodes et techniques employées pour les effectuer, et dont la divulgation nuirait à l'exploitation de ces opérations ou fausserait leurs résultats.

Historique
1980-81-82-83, ch. 111, ann. I «22».

Changement recommandé : Que le principe de primauté de l'intérêt public s'applique expressément à l'article 22.

Solicitor-client privilege

23. The head of a government institution may refuse to disclose any record requested under this Act that contains information that is subject to solicitor-client privilege.

Legislative History
1980-81-82-83, c. 111, Sch. I "23".

Recommended Change: That amendment be considered for section 23 that either clarifies that the exemption will only be used in cases where litigation or negociations are underway or are reasonably foreseeable; or, alternatively, permits the waiving of solicitor-client privilege for a portion of the requested records, without prejudicing the claim for the other portion.

Recommended Change: That section 23 should be made part of the specific public interest override provision.

Secret professionnel des avocats

23. Le responsable d'une institution fédérale peut refuser la communication de documents contenant des renseignements protégés par le secret professionnel qui lie un avocat à son client.

Historique
1980-81-82-83, ch. 111, ann. I «23».

Changement recommandé : Que le gouvernement envisage de modifier l'article 23 de façon soit à préciser que l'exception qu'il prévoit s'applique seulement lorsqu'un litige est en instance ou que des négociations sont en cours, ou qu'on peut vraisemblablement s'y attendre, soit à autoriser la renonciation à la protection du secret professionnel pour une partie des documents demandés, sans compromettre la protection du reste.

Changement recommandé : Que le principe de primauté de l'intérêt public s'applique expressément à l'article 23.

Statutory Prohibitions

Interdictions fondées sur d'autres lois

Statutory prohibitions against disclosure

24. (1) The head of a government institution shall refuse to disclose any record requested under this Act that contains information the disclosure of which is restricted by or pursuant to any provision set out in Schedule II.

Interdictions fondées sur d'autres lois

24. (1) Le responsable d'une institution fédérale est tenu de refuser la communication de documents contenant des renseignements dont la communication est restreinte en vertu d'une disposition figurant à l'annexe II.

Review of statutory prohibitions by Parliamentary committee

(2) Such committee as may be designated or established under section 75 shall review every provision set out in Schedule II and shall, not later than July 1, 1986 or, if Parliament is not then sitting, on any of the first fifteen days next

Examen des dispositions interdisant la communication

(2) Le comité prévu à l'article 75 examine toutes les dispositions figurant à l'annexe II et dépose devant le Parlement un rapport portant sur la nécessité de ces dispositions, ou sur la mesure dans laquelle elles doivent être conservées,

thereafter that Parliament is sitting, cause a report to be laid before Parliament on whether and to what extent the provisions are necessary.

Legislative History
1980-81-82-83, c. 111, Sch. I "24".

Recommended Observation: That the review of statutes under section 24 undertaken by the Standing Committee be immediately reviewed by the Department of Justice and a public report issued as to which statutes are being summarilarly removed from the list and suggestions made as to how section 24 will be reformed to prevent it becoming a loop-hole around the Access to Information Act. *The Information Commissioner should suggest to the Minister of Justice that this is a small but very tangible step toward open and accountable government.*

Recommended Change: Section 24 should be made subject to the specific public interest override provision.

au plus tard le 1er juillet 1986, ou, si le Parlement ne siège pas, dans les quinze premiers jours de séance ultérieurs.

Historique
1980-81-82-83, ch. 111, ann. I «24».

Observation recommandée : Que l'examen des lois prévu par l'article 24 auquel le Comité permanent a procédé fasse immédiatement l'objet d'un autre examen, mené par le ministère de la Justice, et que celui-ci produise un rapport public précisant les lois qu'il décidera de retirer de la liste et les mesures qu'il propose pour modifier l'article 24 de façon à éviter qu'on l'invoque pour contourner la Loi sur l'accès à l'information. *Le Commissaire devrait souligner au ministre de la Justice que ce serait une mesure modeste mais très tangible pour assurer l'ouverture et l'imputabilité gouvernementales.*

Changement recommandé : Que le principe de primauté de l'intérêt public s'applique expressément à l'article 24.

Severability

25. Notwithstanding any other provision of this Act, where a request is made to a government institution for access to a record that the head of the institution is authorized to refuse to disclose under this Act by reason of information or other material contained in the record, the head of the institution shall disclose any part of the record that does not contain, and can reasonably be severed from any part that contains, any such information or material.

Prélèvements

25. Le responsable d'une institution fédérale, dans les cas où il pourrait, vu la nature des renseignements contenus dans le document demandé, s'autoriser de la présente loi pour refuser la communication du document, est cependant tenu, nonobstant les autres dispositions de la présente loi, d'en communiquer les parties dépourvues des renseignements en cause, à condition que le prélèvement de ces parties ne pose pas de problèmes sérieux.

Historique
1980-81-82-83, ch. 111, ann. I «25».

Legislative History
1980-81-82-83, c. 111, Sch. I "25".

Recommended Change: That section 25 be clarified to reinforce the principle that severance applies not only to records, a part of which could be protected by a discretionay exemption, but also to records where part is protected by a mandatory exemption.

Recommended Change: That section 25 be amended to indicate that access is to "information" and not to "records".

Changement recommandé : Que l'article 25 soit précisé de façon à renforcer le principe que le prélèvement ne s'applique pas seulement aux documents dont une partie pourrait faire l'objet d'une exception discrétionnaire, mais aussi à ceux dont une partie est protégée par une exception obligatoire.

Changement recommandé : Que l'article 25 soit modifié de façon à préciser qu'il porte sur la communication d'information et non d'un document.

Refusal of Access

Refus de communication

Refusal of access where information to be published

26. The head of a government institution may refuse to disclose any record requested under this Act or any part thereof if the head of the institution believes on reasonable grounds that the material in the record or part thereof will be published by a government institution, agent of the Government of Canada or minister of the Crown within ninety days after the request is made or within such further period of time as may be necessary for printing or translating the material for the purpose of printing it.

Refus de communication en cas de publication

26. Le responsable d'une institution fédérale peut refuser la communication totale ou partielle d'un document s'il a des motifs raisonnables de croire que le contenu du document sera publié en tout ou en partie par une institution fédérale, un mandataire du gouvernement du Canada ou un ministre dans les quatre-vingt-dix jours suivant la demande ou dans tel délai supérieur entraîné par les contraintes de l'impression ou de la traduction en vue de l'impression.

Legislative History
1980-81-82-83, c. 111, Sch. I "26".

Recommended Change: That section 26 be amended to reduce the time involved in printing a document from 90 days to 60 days.

Recommended Change — Possible New Exemption: That the Act be amended to include an exemption

Historique
1980-81-82-83, ch. 111, ann. I «26».

Changement recommandé : Que l'article 26 soit modifié de façon à ramener de 90 à 60 jours le délai d'impression d'un document.

Changement recommandé — Possibilité d'une nouvelle exception : Que la Loi soit modifiée de façon à prévoir une exception dans le cas des renseignements dont la

dealing with information the disclosure of which could be harmful to the conservation of endangered species or heritage sites.

communication pourrait être dangereuse pour la conservation d'espèces menacées ou de lieux patrimoniaux.

THIRD PARTY INTERVENTION

INTERVENTION DE TIERS

Notice to third parties

27. (1) Where the head of a government institution intends to disclose any record requested under this Act, or any part thereof, that contains or that the head of the institution has reason to believe might contain

(*a*) trade secrets of a third party,

(*b*) information described in paragraph 20(1)(*b*) that was supplied by a third party, or

(*c*) information the disclosure of which the head of the institution could reasonably foresee might effect a result described in paragraph 20(1)(*c*) or (*d*) in respect of a third party,

the head of the institution shall, subject to subsection (2), if the third party can reasonably be located, within thirty days after the request is received, give written notice to the third party of the request and of the fact that the head of the institution intends to disclose the record or part thereof.

Avis aux tiers

27. (1) Sous réserve du paragraphe (2), le responsable d'une institution fédérale qui a l'intention de donner communication totale ou partielle d'un document est tenu de donner au tiers intéressé, dans les trente jours suivant la réception de la demande, avis écrit de celle-ci ainsi que de son intention, si le document contient ou s'il est, selon lui, susceptible de contenir :

a) soit des secrets industriels d'un tiers;

b) soit des renseignements visés à l'alinéa 20(1)*b*) qui ont été fournis par le tiers;

c) soit des renseignements dont la communication risquerait, selon lui, d'entraîner pour le tiers les conséquences visées aux alinéas 20(1)*c*) ou *d*).

La présente disposition ne vaut que s'il est possible de rejoindre le tiers sans problèmes sérieux.

Waiver of notice

(2) Any third party to whom a notice is required to be given under subsection (1) in respect of an intended disclosure may waive the requirement, and where the third party has consented to the disclosure the third party shall be deemed to have waived the requirement.

Renonciation à l'avis

(2) Le tiers peut renoncer à l'avis prévu au paragraphe (1) et tout consentement à la communication du document vaut renonciation à l'avis.

Contents of notice

(3) A notice given under subsection (1) shall include

(*a*) a statement that the head of the government institution giving the notice intends to release a record or a part thereof that might contain material or information described in subsection (1);

(*b*) a description of the contents of the record or part thereof that, as the case may be, belong to, were supplied by or relate to the third party to whom the notice is given; and

(*c*) a statement that the third party may, within twenty days after the notice is given, make representations to the head of the government institution that has control of the record as to why the record or part thereof should not be disclosed.

Contenu de l'avis

(3) L'avis prévu au paragraphe (1) doit contenir les éléments suivants :

a) la mention de l'intention du responsable de l'institution fédérale de donner communication totale ou partielle du document susceptible de contenir les secrets ou les renseignements visés au paragraphe (1);

b) la désignation du contenu total ou partiel du document qui, selon le cas, appartient au tiers, a été fourni par lui ou le concerne;

c) la mention du droit du tiers de présenter au responsable de l'institution fédérale de qui relève le document ses observations quant aux raisons qui justifieraient un refus de communication totale ou partielle, dans les vingt jours suivant la transmission de l'avis.

Extension of time limit

(4) The head of a government institution may extend the time limit set out in subsection (1) in respect of a request under this Act where the time limit set out in section 7 is extended under paragraph 9(1)(*a*) or (*b*) in respect of the same request, but any extension under this subsection shall be for a period no longer than the period of the extension under section 9.

Legislative History
1980-81-82-83, c. 111, Sch. I "27".

Prorogation de délai

(4) Le responsable d'une institution fédérale peut proroger le délai visé au paragraphe (1) dans les cas où le délai de communication à la personne qui a fait la demande est prorogé en vertu des alinéas 9(1)*a*) ou *b*), mais le délai ne peut dépasser celui qui a été prévu pour la demande en question.

Historique
1980-81-82-83, ch. 111, ann. I «27».

Representations of third party and decision

28. (1) Where a notice is given by the head of a government institution under subsection 27(1) to a third party in respect of a record or a part thereof,

Observations des tiers et décision

28. (1) Dans les cas où il a donné avis au tiers conformément au paragraphe 27(1), le responsable d'une institution fédérale est tenu :

a) de donner au tiers la possibilité de lui présenter, dans les

(*a*) the third party shall, within twenty days after the notice is given, be given the opportunity to make representations to the head of the institution as to why the record or the part thereof should not be disclosed; and

(*b*) the head of the institution shall, within thirty days after the notice is given, if the third party has been given an opportunity to make representations under paragraph (*a*), make a decision as to whether or not to disclose the record or the part thereof and give written notice of the decision to the third party.

a) de prendre dans les vingt jours suivant la transmission de l'avis, des observations sur les raisons qui justifieraient un refus de communication totale ou partielle du document;

b) de prendre dans les trente jours suivant la transmission de l'avis, pourvu qu'il ait donné au tiers la possibilité de présenter des observations conformément à l'alinéa *a*), une décision quant à la communication totale ou partielle du document et de donner avis de sa décision au tiers.

Representations to be made in writing

(2) Representations made by a third party under paragraph (1)(*a*) shall be made in writing unless the head of the government institution concerned waives that requirement, in which case they may be made orally.

(2) Les observations prévues à l'alinéa (1)*a*) se font par écrit, sauf autorisation du responsable de l'institution fédérale quant à une présentation orale.

Observations écrites

Contents of notice of decision to disclose

(3) A notice given under paragraph (1)(*b*) of a decision to disclose a record requested under this Act or a part thereof shall include

(*a*) a statement that the third party to whom the notice is given is entitled to request a review of the decision under section 44 within twenty days after the notice is given; and

(*b*) a statement that the person who requested access to the record will be given access thereto or to the part thereof unless, within twenty days after the notice is given, a review of the decision is requested under section 44.

(3) L'avis d'une décision de donner communication totale ou partielle d'un document conformément à l'alinéa (1)*b*) doit contenir les éléments suivants :

a) la mention du droit du tiers d'exercer un recours en révision en vertu de l'article 44, dans les vingt jours suivant la transmission de l'avis;

b) la mention qu'à défaut de l'exercice du recours en révision dans ce délai, la personne qui a fait la demande recevra communication totale ou partielle du document.

Contenu de l'avis de la décision de donner communication

Disclosure of record

(4) Where, pursuant to paragraph (1)(*b*), the head of a government institution decides to disclose a record requested under this Act or a part thereof, the head of the institution shall give the person who made the request access to the record or the part thereof forthwith on completion of twenty days after a notice is given under that paragraph, unless a review of the decision is requested under section 44.

Legislative History
1980-81-82-83, c. 111, Sch. I "28".

Communication du document

(4) Dans les cas où il décide, en vertu de l'alinéa (1)*b*), de donner communication totale ou partielle du document à la personne qui en a fait la demande, le responsable de l'institution fédérale donne suite à sa décision dès l'expiration des vingt jours suivant la transmission de l'avis prévu à cet alinéa, sauf si un recours en révision a été exercé en vertu de l'article 44.

Historique
1980-81-82-83, ch. 111, ann. I «28».

Where the Information Commissioner recommends disclosure

29. (1) Where the head of a government institution decides, on the recommendation of the Information Commissioner made pursuant to subsection 37(1), to disclose a record requested under this Act or a part thereof, the head of the institution shall give written notice of the decision to

(*a*) the person who requested access to the record; and

(*b*) any third party that the head of the institution has notified under subsection 27(1) in respect of the request or would have notified under that subsection if the head of the institution had at the time of the request intended to disclose the record or part thereof.

Recommandation du Commissaire à l'information

29. (1) Dans les cas où, sur la recommandation du Commissaire à l'information visée au paragraphe 37(1), il décide de donner communication totale ou partielle d'un document, le responsable de l'institution fédérale transmet un avis écrit de sa décision aux personnes suivantes :

a) la personne qui en a fait la demande;

b) le tiers à qui il a donné l'avis prévu au paragraphe 27(1) ou à qui il l'aurait donné s'il avait eu l'intention de donner communication totale ou partielle du document.

Contents of notice

(2) A notice given under subsection (1) shall include

(*a*) a statement that any third party referred to in paragraph (1)(*b*) is entitled to request a review of the decision under section 44 within twenty days after the notice is given; and

Contenu de l'avis

(2) L'avis prévu au paragraphe (1) doit contenir les éléments suivants :

a) la mention du droit du tiers d'exercer un recours en révision en vertu de l'article 44, dans les vingt jours suivant la transmission de l'avis;

(*b*) a statement that the person who requested access to the record will be given access thereto unless, within twenty days after the notice is given, a review of the decision is requested under section 44.

Legislative History
1980-81-82-83, c. 111, Sch. I "29".

b) la mention qu'à défaut de l'exercice du recours en révision dans ce délai, la personne qui a fait la demande recevra communication du document.

Historique
1980-81-82-83, ch. 111, ann. I «29».

COMPLAINTS

PLAINTES

Receipt and investigation of complaints

30. (1) Subject to this Act, the Information Commissioner shall receive and investigate complaints

(*a*) from persons who have been refused access to a record requested under this Act or a part thereof;

(*b*) from persons who have been required to pay an amount under section 11 that they consider unreasonable;

(*c*) from persons who have requested access to records in respect of which time limits have been extended pursuant to section 9 where they consider the extension unreasonable;

(*d*) from persons who have not been given access to a record or a part thereof in the official language requested by the person under subsection 12(2), or have not been given access in that language within a period of time that they consider appropriate;

Réception des plaintes et enquêtes

30. (1) Sous réserve des autres dispositions de la présente loi, le Commissaire à l'information reçoit les plaintes et fait enquête sur les plaintes :

a) déposées par des personnes qui se sont vu refuser la communication totale ou partielle d'un document qu'elles ont demandé en vertu de la présente loi;

b) déposées par des personnes qui considèrent comme excessif le montant réclamé en vertu de l'article 11;

c) déposées par des personnes qui ont demandé des documents dont les délais de communication ont été prorogés en vertu de l'article 9 et qui considèrent la prorogation comme abusive;

d) déposées par des personnes qui se sont vu refuser la traduction visée au paragraphe 12(2) ou qui considèrent comme contre-indiqué le délai de communication relatif à la traduction;

d.1) déposées par des personnes qui se sont vu refuser la

(*d.1*) from persons who have not been given access to a record or a part thereof in an alternative format pursuant to a request made under subsection 12(3), or have not been given such access within a period of time that they consider appropriate;

(*e*) in respect of any publication or bulletin referred to in section 5; or

(*f*) in respect of any other matter relating to requesting or obtaining access to records under this Act.

communication des documents ou des parties en cause sur un support de substitution au titre du paragraphe 12(3) ou qui considèrent comme contre-indiqué le délai de communication relatif au transfert;

e) portant sur le répertoire ou le bulletin visés à l'article 5;

f) portant sur toute autre question relative à la demande ou à l'obtention de documents en vertu de la présente loi.

Complaints submitted on behalf of complainants

(2) Nothing in this Act precludes the Information Commissioner from receiving and investigating complaints of a nature described in subsection (1) that are submitted by a person authorized by the complainant to act on behalf of the complainant, and a reference to a complainant in any other section includes a reference to a person so authorized.

Entremise de représentants

(2) Le Commissaire à l'information peut recevoir les plaintes visées au paragraphe (1) par l'intermédiaire d'un représentant du plaignant. Dans les autres articles de la présente loi, les dispositions qui concernent le plaignant concernent également son représentant.

Information Commissioner may initiate complaint

(3) Where the Information Commissioner is satisfied that there are reasonable grounds to investigate a matter relating to requesting or obtaining access to records under this Act, the Commissioner may initiate a complaint in respect thereof.

Plaintes émanant du Commissaire à l'information

(3) Le Commissaire à l'information peut lui-même prendre l'initiative d'une plainte s'il a des motifs raisonnables de croire qu'une enquête devrait être menée sur une question relative à la demande ou à l'obtention de documents en vertu de la présente loi.

Legislative History
1980-81-82-83, c. 111, Sch. I "30"; 1992, c. 21, s. 4.

Historique
1980-81-82-83, ch. 111, ann. I «30»; 1992, ch. 21, art. 4.

Recommended Change: That section 30 be amended to include in the powers of the Information

Changement recommandé : Que l'article 30 soit modifié de façon à donner au Commissaire à

Commissioner a right to review the organization of information in government for purposes of access and dissemination; the appropriateness of public reference and charging mechanisms; and to investigate all submissions for licensing databases.

l'information le pouvoir d'examiner l'organisation de l'information gouvernementale afin d'en faciliter l'accès et la communication, de déterminer la qualité des mécanismes de référence offerts au public et celle des méthodes de facturation, ainsi que de faire enquête sur toutes les demandes de licences d'exploitation de bases de données.

Written complaint

31. A complaint under this Act shall be made to the Information Commissioner in writing unless the Commissioner authorizes otherwise and shall, where the complaint relates to a request for access to a record, be made within one year from the time when the request for the record in respect of which the complaint is made was received.

Legislative History
1980-81-82-83, c. 111, Sch. I "31".

Plaintes écrites

31. Les plaintes sont, sauf dispense accordée par le Commissaire à l'information, déposées devant lui par écrit; celles qui ont trait à une demande de communication de documents se prescrivent par un an à compter de la réception de la demande.

Historique
1980-81-82-83, ch. 111, ann. I «31».

INVESTIGATIONS

ENQUÊTES

Notice of intention to investigate

32. Before commencing an investigation of a complaint under this Act, the Information Commissioner shall notify the head of the government institution concerned of the intention to carry out the investigation and shall inform the head of the institution of the substance of the complaint.

Legislative History
1980-81-82-83, c. 111, Sch. I "32".

Avis d'enquête

32. Le Commissaire à l'information, avant de procéder aux enquêtes prévues par la présente loi, avise le responsable de l'institution fédérale concernée de son intention d'enquêter et lui fait connaître l'objet de la plainte.

Historique
1980-81-82-83, ch. 111, ann. I «32».

Notice to third parties

33. Where the head of a government institution refuses to disclose a record requested under this Act or a part thereof and receives a notice under section 32 of a complaint in respect of the refusal, the head of the institution shall forthwith advise

Avis aux tiers

33. Dans les cas où il a refusé de donner communication totale ou partielle d'un document et qu'il reçoit à ce propos l'avis prévu à l'article 32, le responsable de l'institution fédérale mentionne sans retard au Commissaire à

the Information Commissioner of any third party that the head of the institution has notified under subsection 27(1) in respect of the request or would have notified under that subsection if the head of the institution had intended to disclose the record or part thereof.

Legislative History
1980-81-82-83, c. 111, Sch. I "33".

l'information le nom du tiers à qui il a donné l'avis prévu au paragraphe 27(1) ou à qui il l'aurait donné s'il avait eu l'intention de donner communication totale ou partielle du document.

Historique
1980-81-82-83, ch. 111, ann. I «33».

Regulation of procedure

34. Subject to this Act, the Information Commissioner may determine the procedure to be followed in the performance of any duty or function of the Commissioner under this Act.

Legislative History
1980-81-82-83, c. 111, Sch. I "34".

Procédure

34. Sous réserve des autres dispositions de la présente loi, le Commissaire à l'information peut établir la procédure à suivre dans l'exercice de ses pouvoirs et fonctions.

Historique
1980-81-82-83, ch. 111, ann. I «34».

Investigations in private

35. (1) Every investigation of a complaint under this Act by the Information Commissioner shall be conducted in private.

Secret des enquêtes

35. (1) Les enquêtes menées sur les plaintes par le Commissaire à l'information sont secrètes.

Right to make representations

(2) In the course of an investigation of a complaint under this Act by the Information Commissioner, a reasonable opportunity to make representations shall be given to

(*a*) the person who made the complaint,

(*b*) the head of the government institution concerned, and

(*c*) where the Information Commissioner intends to recommend under subsection 37(1) that a record or a part thereof be disclosed that contains or that the Information Commissioner has reason to believe might contain

Droit de présenter des observations

(2) Au cours de l'enquête, les personnes suivantes doivent avoir la possibilité de présenter leurs observations au Commissaire à l'information, nul n'ayant toutefois le droit absolu d'être présent lorsqu'une autre personne présente des observations au Commissaire à l'information, ni d'en recevoir communication ou de faire des commentaires à leur sujet :

a) la personne qui a déposé la plainte;

b) le responsable de l'institution fédérale concernée;

c) le tiers visé au paragraphe 27(1), si le Commissaire à l'information a l'intention de

(i) trade secrets of a third party,

(ii) information described in paragraph 20(1)(*b*) that was supplied by a third party, or

(iii) information the disclosure of which the Information Commissioner could reasonably foresee might effect a result described in paragraph 20(1)(*c*) or (*d*) in respect of a third party,

the third party, if the third party can reasonably be located,

but no one is entitled as of right to be present during, to have access to or to comment on representations made to the Commissioner by any other person.

Legislative History
1980-81-82-83, c. 111, Sch. I "35".

Recommended Change: That section 35 be amended to make it clear that representations made by one party during the private investigation of a complaint by the Commissioner are not accessible by the other parties to the complaint through another access request. There is a similar need to protect information which has been prepared during the litigation stage.

recommander, en vertu du paragraphe 37(1), la communication d'un document visé au paragraphe 27(1).

Historique
1980-81-82-83, ch. 111, ann. I «35».

Changement recommandé : Que l'article 35 soit modifié de façon à préciser que les observations faites par une partie au cours de l'enquête privée menée par le Commissaire sur une plainte ne peuvent être divulguées aux autres parties à la plainte dans le contexte d'une autre demande d'accès à l'information. Il faut aussi protéger les renseignements préparés dans le contexte d'un litige.

Powers of Information Commissioner in carrying out investigations

36. (1) The Information Commissioner has, in relation to the carrying out of the investigation of any complaint under this Act, power

(*a*) to summon and enforce the appearance of persons before the

36. (1) Le Commissaire à l'information a, pour l'instruction des plaintes déposées en vertu de la présente loi, le pouvoir :

Pouvoirs du Commissaire à l'information pour la tenue des enquêtes

a) d'assigner et de contraindre des témoins à comparaître devant lui, à déposer verbalement ou par écrit

Information Commissioner and compel them to give oral or written evidence on oath and to produce such documents and things as the Commissioner deems requisite to the full investigation and consideration of the complaint, in the same manner and to the same extent as a superior court of record;

(*b*) to administer oaths;

(*c*) to receive and accept such evidence and other information, whether on oath or by affidavit or otherwise, as the Information Commissioner sees fit, whether or not the evidence or information is or would be admissible in a court of law;

(*d*) to enter any premises occupied by any government institution on satisfying any security requirements of the institution relating to the premises;

(*e*) to converse in private with any person in any premises entered pursuant to paragraph (*d*) and otherwise carry out therein such inquiries within the authority of the Information Commissioner under this Act as the Commissioner sees fit; and

(*f*) to examine or obtain copies of or extracts from books or other records found in any premises entered pursuant to paragraph (*d*) containing any matter relevant to the investigation.

sous la foi du serment et à produire les pièces qu'il juge indispensables pour instruire et examiner à fond les plaintes dont il est saisi, de la même façon et dans la même mesure qu'une cour supérieure d'archives;

b) de faire prêter serment;

c) de recevoir des éléments de preuve ou des renseignements par déclaration verbale ou écrite sous serment ou par tout autre moyen qu'il estime indiqué, indépendamment de leur admissibilité devant les tribunaux;

d) de pénétrer dans les locaux occupés par une institution fédérale, à condition de satisfaire aux normes de sécurité établies par l'institution pour ces locaux;

e) de s'entretenir en privé avec toute personne se trouvant dans les locaux visés à l'alinéa *d*) et d'y mener, dans le cadre de la compétence que lui confère la présente loi, les enquêtes qu'il estime nécessaires;

f) d'examiner ou de se faire remettre des copies ou des extraits des livres ou autres documents contenant des éléments utiles à l'enquête et trouvés dans les locaux visés à l'alinéa *d*).

Access to records

(2) Notwithstanding any other Act of Parliament or any privilege under the law of evidence, the Information Commissioner may, during the investigation of any

Accès aux documents

(2) Nonobstant toute autre loi fédérale et toute immunité reconnue par le droit de la preuve, le Commissaire à l'information a, pour les enquêtes qu'il mène en vertu de

complaint under this Act, examine any record to which this Act applies that is under the control of a government institution, and no such record may be withheld from the Commissioner on any grounds.

la présente loi, accès à tous les documents qui relèvent d'une institution fédérale et auxquels la présente loi s'applique; aucun de ces documents ne peut, pour quelque motif que ce soit, lui être refusé.

Evidence in other proceedings

(3) Except in a prosecution of a person for an offence under section 131 of the *Criminal Code* (perjury) in respect of a statement made under this Act, in a prosecution for an offence under this Act, or in a review before the Court under this Act or an appeal therefrom, evidence given by a person in proceedings under this Act and evidence of the existence of the proceedings is inadmissible against that person in a court or in any other proceedings.

Inadmissibilité de la preuve dans d'autres procédures

(3) Sauf les cas où une personne est poursuivie soit pour une infraction à l'article 131 du *Code criminel* (parjure) se rapportant à une déclaration faite en vertu de la présente loi, soit pour infraction à la présente loi, ou sauf les cas de recours en révision prévus par la présente loi devant la Cour ou les cas d'appel de la décision rendue par la Cour, les dépositions faites au cours de procédures prévues par la présente loi ou le fait de l'existence de ces procédures ne sont pas admissibles contre le déposant devant les tribunaux ni dans aucune autre procédure.

Witness fees

(4) Any person summoned to appear before the Information Commissioner pursuant to this section is entitled in the discretion of the Commissioner to receive the like fees and allowances for so doing as if summoned to attend before the Federal Court.

Frais des témoins

(4) Les témoins assignés à comparaître devant le Commissaire à l'information en vertu du présent article peuvent recevoir, si le Commissaire le juge indiqué, les frais et indemnités accordés aux témoins assignés devant la Cour fédérale.

Return of documents, etc.

(5) Any document or thing produced pursuant to this section by any person or government institution shall be returned by the Information Commissioner within ten days after a request is made to the Commissioner by that person or government institution, but nothing in this subsection precludes the Commissioner from again requiring its production in accordance with this section.

Renvoi des documents, etc.

(5) Les personnes ou les institutions fédérales qui produisent des pièces demandées en vertu du présent article peuvent exiger du Commissaire à l'information qu'il leur renvoie ces pièces dans les dix jours suivant la requête qu'elles lui présentent à cette fin, mais rien n'empêche le Commissaire d'en réclamer une nouvelle production.

Historique

1980-81-82-83, ch. 111, ann. I «36»; L.R. (1985), ch. A-1, art. 36; L.R.

Legislative History
1980-81-82-83, c. 111, Sch. I "36"; R.S., 1985, c. A-1, s. 36; R.S., 1985, c. 27 (1st Supp.), s. 187 (Sch. V, item 1(1)).

(1985), ch. 27 (1er suppl.), art. 187 (ann. V, 1(1)).

Findings and recommendations of Information Commissioner

37. (1) If, on investigating a complaint in respect of a record under this Act, the Information Commissioner finds that the complaint is well-founded, the Commissioner shall provide the head of the government institution that has control of the record with a report containing

(*a*) the findings of the investigation and any recommendations that the Commissioner considers appropriate; and

(*b*) where appropriate, a request that, within a time specified in the report, notice be given to the Commissioner of any action taken or proposed to be taken to implement the recommendations contained in the report or reasons why no such action has been or is proposed to be taken.

Conclusions et recommandations du Commissaire à l'information

37. (1) Dans les cas où il conclut au bien-fondé d'une plainte portant sur un document, le Commissaire à l'information adresse au responsable de l'institution fédérale de qui relève le document un rapport où :

a) il présente les conclusions de son enquête ainsi que les recommandations qu'il juge indiquées;

b) il demande, s'il le juge à propos, au responsable de lui donner avis, dans un délai déterminé, soit des mesures prises ou envisagées pour la mise en oeuvre de ses recommandations, soit des motifs invoqués pour ne pas y donner suite.

Report to complainant and third parties

(2) The Information Commissioner shall, after investigating a complaint under this Act, report to the complainant and any third party that was entitled under subsection 35(2) to make and that made representations to the Commissioner in respect of the complaint the results of the investigation, but where a notice has been requested under paragraph (1)(*b*) no report shall be made under this subsection until the expiration of the time within which the notice is to be given to the Commissioner.

Compte rendu au plaignant

(2) Le Commissaire à l'information rend compte des conclusions de son enquête au plaignant et aux tiers qui pouvaient, en vertu du paragraphe 35(2), lui présenter des observations et qui les ont présentées; toutefois, dans les cas prévus à l'alinéa (1)*b*), le Commissaire à l'information ne peut faire son compte rendu qu'après l'expiration du délai imparti au responsable de l'institution fédérale.

Matter to be included in report to complainant

(3) Where a notice has been requested under paragraph (1)(*b*) but no such notice is received by the Commissioner within the time specified therefor or the action described in the notice is, in the opinion of the Commissioner, inadequate or inappropriate or will not be taken in a reasonable time, the Commissioner shall so advise the complainant in his report under subsection (2) and may include in the report such comments on the matter as he thinks fit.

(3) Le Commissaire à l'information mentionne également dans son compte rendu au plaignant, s'il y a lieu, le fait que, dans les cas prévus à l'alinéa (1)*b*), il n'a pas reçu d'avis dans le délai imparti ou que les mesures indiquées dans l'avis sont, selon lui, insuffisantes, inadaptées ou non susceptibles d'être prises en temps utile. Il peut en outre y inclure tous commentaires qu'il estime utiles.

Éléments à inclure dans le compte rendu

Access to be given

(4) Where, pursuant to a request under paragraph (1)(*b*), the head of a government institution gives notice to the Information Commissioner that access to a record or a part thereof will be given to a complainant, the head of the institution shall give the complainant access to the record or part thereof

(*a*) forthwith on giving the notice if no notice is given to a third party under paragraph 29(1)(*b*) in the matter; or

(*b*) forthwith on completion of twenty days after notice is given to a third party under paragraph 29(1)(*b*), if that notice is given, unless a review of the matter is requested under section 44.

(4) Dans les cas où il fait suite à la demande formulée par le Commissaire à l'information en vertu de l'alinéa (1)*b*) en avisant le Commissaire qu'il donnera communication totale ou partielle d'un document, le responsable d'une institution fédérale est tenu de donner cette communication au plaignant :

a) immédiatement, dans les cas où il n'y a pas de tiers à qui donner l'avis prévu à l'alinéa 29(1)*b*);

b) dès l'expiration des vingt jours suivant l'avis prévu à l'alinéa 29(1)*b*), dans les autres cas, sauf si un recours en révision a été exercé en vertu de l'article 44.

Communication accordée

Right of review

(5) Where, following the investigation of a complaint relating to a refusal to give access to a record requested under this Act or a part thereof, the head of a government institution does not give notice to the Information Commissioner that access to the record will be given, the Information Commissioner shall inform the complainant that the complainant has

(5) Dans les cas où, l'enquête terminée, le responsable de l'institution fédérale concernée n'avise pas le Commissaire à l'information que communication du document ou de la partie en cause sera donnée au plaignant, le Commissaire à l'information informe celui-ci de l'existence d'un droit de recours en révision devant la Cour.

Recours en révision

the right to apply to the Court for a review of the matter investigated.

Legislative History
1980-81-82-83, c. 111, Sch. I "37".

Historique
1980-81-82-83, ch. 111, ann. I «37».

REPORTS TO PARLIAMENT

RAPPORTS AU PARLEMENT

Annual report

38. The Information Commissioner shall, within three months after the termination of each financial year, submit an annual report to Parliament on the activities of the office during that financial year.

Rapport annuel

38. Dans les trois mois suivant la fin de chaque exercice, le Commissaire à l'information présente au Parlement le rapport des activités du commissariat au cours de l'exercice.

Legislative History
1980-81-82-83, c. 111, Sch. I "38".

Historique
1980-81-82-83, ch. 111, ann. I «38».

Recommended Change: That section 37 and other appropriate sections be amended to redefine the Information Commissioner's role to give that office the power to make binding decisions regarding fees and fee waivers, time extensions, language of access and difficulties with the publications and power to carry out investigations regarding institutions' compliance with the Act, including new provisions relating to inventorying, indexing and disseminating information.

Changement recommandé : Que l'article 37 et les autres dispositions pertinentes de la Loi soient modifiés afin de donner au Commissaire le pouvoir de rendre des ordonnances exécutoires sur les droits et sur leur suppression, sur les prorogations de délais, sur la langue d'accès à l'information et sur les autres questions liées aux publications, ainsi que le pouvoir de mener des enquêtes sur le degré d'observation, par les institutions fédérales, des dispositions de la Loi, y compris les nouvelles dispositions relatives à la constitution de répertoires et d'index des renseignements ainsi qu'à la distribution de l'information.

Recommended Observation: That the Commissioner establish a database of reports, investigations, rulings and other public documentation which will be available through the Canada Information network.

Observation recommandée : Que le Commissaire constitue une base de données de rapports, d'enquêtes, de décisions et d'autres documents publics accessible grâce au Réseau d'information du Canada.

Recommended Change: That the Act be amended to give the Commissioner mandates for public education to engage in or commission research into access issues, and power to comment on the

Changement recommandé : Que la Loi soit modifiée de façon à donner au Commissaire le mandat de sensibiliser le public aux questions

implications for access to information of proposed legislative schemes or programs of public bodies.

Recommended Change: That the Act be amended to permit the head of a government institution to request from the information commissioner an order to cease to respond to access requests that, because of their repetitious or systematic nature, would reasonably interfere with the operations of the institution. The Commissioner would only issue the order after an immediate investigation of the situation, and this order would be reviewable by the Federal Court.

d'accès à l'information et de faire ou de faire faire des recherches à ce sujet, ainsi que le pouvoir de présenter des commentaires sur les implications, en matière d'accès à l'information, des propositions de mesures législatives ou de programmes des organismes publics.

Changement recommandé : Que la Loi soit modifiée de façon à autoriser le responsable d'une institution gouvernementale à demander au Commissaire à l'information de rendre une ordonnance de cesser de répondre aux demandes d'accès qui, en raison de leur nature répétitive ou systématique, nuiraient trop au fonctionnement de l'institution. Le Commissaire ne rendrait une telle ordonnance qu'après avoir immédiatement fait enquête sur la situation, et l'ordonnance pourrait être révisée par la Cour fédérale.

Special reports

39. (1) The Information Commissioner may, at any time, make a special report to Parliament referring to and commenting on any matter within the scope of the powers, duties and functions of the Commissioner where, in the opinion of the Commissioner, the matter is of such urgency or importance that a report thereon should not be deferred until the time provided for transmission of the next annual report of the Commissioner under section 38.

Rapports spéciaux

39. (1) Le Commissaire à l'information peut, à toute époque de l'année, présenter au Parlement un rapport spécial sur toute question relevant de ses pouvoirs et fonctions et dont l'urgence ou l'importance sont telles, selon lui, qu'il serait contre-indiqué d'en différer le compte rendu jusqu'à l'époque du rapport annuel suivant.

Where investigation made

(2) Any report made pursuant to subsection (1) that relates to an investigation under this Act shall be made only after the procedures set out in section 37 have been followed in respect of the investigation.

Cas des enquêtes

(2) Le Commissaire à l'information ne peut présenter de rapport spécial sur des enquêtes qu'après observation des formalités prévues à leur sujet à l'article 37.

Legislative History
1980-81-82-83, c. 111, Sch. I "39".

Historique
1980-81-82-83, ch. 111, ann. I «39».

Transmission of reports

40. (1) Every report to Parliament made by the Information Commissioner under section 38 or 39 shall be made by being transmitted to the Speaker of the Senate and to the Speaker of the House of Commons for tabling in those Houses.

Remise des rapports

40. (1) La présentation des rapports du Commissaire à l'information au Parlement s'effectue par remise au président du Sénat et à celui de la Chambre des communes pour dépôt devant leurs chambres respectives.

Reference to Parliamentary committee

(2) Every report referred to in subsection (1) shall, after it is transmitted for tabling pursuant to that subsection, be referred to the committee designated or established by Parliament for the purpose of subsection 75(1).

Renvoi en comité

(2) Les rapports visés au paragraphe (1) sont, après leur dépôt, renvoyés devant le comité désigné ou constitué par le Parlement en application du paragraphe 75(1).

Legislative History
1980-81-82-83, c. 111, Sch. I "40".

Historique
1980-81-82-83, ch. 111, ann. I «40».

REVIEW BY THE FEDERAL COURT

RÉVISION PAR LA COUR FÉDÉRALE

Review by Federal Court

41. Any person who has been refused access to a record requested under this Act or a part thereof may, if a complaint has been made to the Information Commissioner in respect of the refusal, apply to the Court for a review of the matter within forty-five days after the time the results of an investigation of the complaint by the Information Commissioner are reported to the complainant under subsection 37(2) or within such further time as the Court may, either before or after the expiration of those forty-five days, fix or allow.

Révision par la Cour fédérale

41. La personne qui s'est vu refuser communication totale ou partielle d'un document demandé en vertu de la présente loi et qui a déposé ou fait déposer une plainte à ce sujet devant le Commissaire à l'information peut, dans un délai de quarante-cinq jours suivant le compte rendu du Commissaire prévu au paragraphe 37(2), exercer un recours en révision de la décision de refus devant la Cour. La Cour peut, avant ou après l'expiration du délai, le proroger ou en autoriser la prorogation.

Legislative History
1980-81-82-83, c. 111, Sch. I "41".

Historique
1980-81-82-83, ch. 111, ann. I «41».

Information Commissioner may apply or appear

42. (1) The Information Commissioner may

(*a*) apply to the Court, within the time limits prescribed by section 41, for a review of any refusal to disclose a record requested under this Act or a part thereof in respect of which an investigation has been carried out by the Information Commissioner, if the Commissioner has the consent of the person who requested access to the record;

(*b*) appear before the Court on behalf of any person who has applied for a review under section 41; or

(*c*) with leave of the Court, appear as a party to any review applied for under section 41 or 44.

Exercice du recours par le Commissaire, etc.

42. (1) Le Commissaire à l'information a qualité pour :

a) exercer lui-même, à l'issue de son enquête et dans les délais prévus à l'article 41, le recours en révision pour refus de communication totale ou partielle d'un document, avec le consentement de la personne qui avait demandé le document;

b) comparaître devant la Cour au nom de la personne qui a exercé un recours devant la Cour en vertu de l'article 41;

c) comparaître, avec l'autorisation de la Cour, comme partie à une instance engagée en vertu des articles 41 ou 44.

Applicant may appear as party

(2) Where the Information Commissioner makes an application under paragraph (1)(*a*) for a review of a refusal to disclose a record requested under this Act or a part thereof, the person who requested access to the record may appear as a party to the review.

Comparution de la personne qui a fait la demande

(2) Dans le cas prévu à l'alinéa (1)*a*), la personne qui a demandé communication du document en cause peut comparaître comme partie à l'instance.

Legislative History
1980-81-82-83, c. 111, Sch. I "42".

Historique
1980-81-82-83, ch. 111, ann. I «42».

Notice to third parties

43. (1) The head of a government institution who has refused to give access to a record requested under this Act or a part thereof shall forthwith on being given notice of any application made under section 41 or 42 give written notice of the application to any third party that the head of the institution has notified under subsection 27(1) in respect of the request or would have notified under that subsection if the head of the institution had intended

Avis au tiers

43. (1) Sur réception d'un avis de recours en révision exercé en vertu des articles 41 ou 42, le responsable d'une institution fédérale qui avait refusé communication totale ou partielle du document en litige donne à son tour avis du recours au tiers à qui il avait donné l'avis prévu au paragraphe 27(1) ou à qui il l'aurait donné s'il avait eu l'intention de donner communication totale ou partielle du document.

to disclose the record or part thereof.

Third party may appear as party

(2) Any third party that has been given notice of an application for a review under subsection (1) may appear as a party to the review.

Legislative History
1980-81-82-83, c. 111, Sch. I "43"; 1992, c. 1, s. 144 (Sch. VII, item 2(F)).

Comparution du tiers

(2) Le tiers qui est avisé conformément au paragraphe (1) peut comparaître comme partie à l'instance.

Historique
1980-81-82-83, ch. 111, ann. I «43»; 1992, ch. 1, art. 144 (ann. VII, nº 2(F)).

Third party may apply for a review

44. (1) Any third party to whom the head of a government institution is required under paragraph 28(1)(*b*) or subsection 29(1) to give a notice of a decision to disclose a record or a part thereof under this Act may, within twenty days after the notice is given, apply to the Court for a review of the matter.

Recours en révision du tiers

44. (1) Le tiers que le responsable d'une institution fédérale est tenu, en vertu de l'alinéa 28(1)*b*) ou du paragraphe 29(1), d'aviser de la communication totale ou partielle d'un document peut, dans les vingt jours suivant la transmission de l'avis, exercer un recours en révision devant la Cour.

Notice to person who requested record

(2) The head of a government institution who has given notice under paragraph 28(1)(*b*) or subsection 29(1) that a record requested under this Act or a part thereof will be disclosed shall forthwith on being given notice of an application made under subsection (1) in respect of the disclosure give written notice of the application to the person who requested access to the record.

Avis à la personne qui a fait la demande

(2) Le responsable d'une institution fédérale qui a donné avis de communication totale ou partielle d'un document en vertu de l'alinéa 28(1)*b*) ou du paragraphe 29(1) est tenu, sur réception d'un avis de recours en révision de cette décision, d'en aviser par écrit la personne qui avait demandé communication du document.

Person who requested access may appear as party

(3) Any person who has been given notice of an application for a review under subsection (2) may appear as a party to the review.

Legislative History
1980-81-82-83, c. 111, Sch. I "44". R.S., 1985, c. A-1, s. 44; R.S., 1985, c. 1 (4th Supp.), s. 45 (Sch. III, item 1(F)).

Comparution

(3) La personne qui est avisée conformément au paragraphe (2) peut comparaître comme partie à l'instance.

Historique
1980-81-82-83, ch. 111, ann. I «44». L.R. (1985), ch. A-1, art. 44; L.R. (1985), ch. 1 (4ᵉ suppl.), art. 45 (ann. III, nº 1(F)).

Recommended Change: That the Act be amended to provide in section 44 a time limit (20 or 30 days) by which an intervening third party must seek a hearing before the Federal Court.

Changement recommandé : Que la Loi soit modifiée par l'ajout, à l'article 44, d'un délai (de 20 ou de 30 jours) d'exercice des recours des tiers devant la Cour fédérale.

Hearing in summary way

45. An application made under section 41, 42 or 44 shall be heard and determined in a summary way in accordance with any special rules made in respect of such applications pursuant to section 46 of the *Federal Court Act*.

Procédure sommaire

45. Les recours prévus aux articles 41, 42 et 44 sont entendus et jugés en procédure sommaire, conformément aux règles de pratique spéciales adoptées à leur égard en vertu de l'article 46 de la *Loi sur la Cour fédérale*.

Legislative History
1980-81-82-83, c. 111, Sch. I "45".

Historique
1980-81-82-83, ch. 111, ann. I «45».

Access to records

46. Notwithstanding any other Act of Parliament or any privilege under the law of evidence, the Court may, in the course of any proceedings before the Court arising from an application under section 41, 42 or 44, examine any record to which this Act applies that is under the control of a government institution, and no such record may be withheld from the Court on any grounds.

Accès aux documents

46. Nonobstant toute autre loi fédérale et toute immunité reconnue par le droit de la preuve, la Cour a, pour les recours prévus aux articles 41, 42 et 44, accès à tous les documents qui relèvent d'une institution fédérale et auxquels la présente loi s'applique; aucun de ces documents ne peut, pour quelque motif que ce soit, lui être refusé.

Legislative History
1980-81-82-83, c. 111, Sch. I "46".

Historique
1980-81-82-83, ch. 111, ann. I «46».

Court to take precautions against disclosing

47. (1) In any proceedings before the Court arising from an application under section 41, 42 or 44, the Court shall take every reasonable precaution, including, when appropriate, receiving representations *ex parte* and conducting hearings *in camera*, to avoid the disclosure by the Court or any person of

Précautions à prendre contre la divulgation

47. (1) À l'occasion des procédures relatives aux recours prévus aux articles 41, 42 et 44, la Cour prend toutes les précautions possibles, notamment, si c'est indiqué, par la tenue d'audiences à huis clos et l'audition d'arguments en l'absence d'une partie, pour éviter que ne soient divulgués de par son propre fait ou celui de quiconque :

(*a*) any information or other material on the basis of which the head of a government institution would be authorized to refuse to

a) des renseignements qui, par leur nature, justifient, en vertu de la présente loi, un refus de

disclose a part of a record requested under this Act; or

(*b*) any information as to whether a record exists where the head of a government institution, in refusing to disclose the record under this Act, does not indicate whether it exists.

communication totale ou partielle d'un document;

b) des renseignements faisant état de l'existence d'un document que le responsable d'une institution fédérale a refusé de communiquer sans indiquer s'il existait ou non.

Disclosure of offence authorized

(2) The Court may disclose to the appropriate authority information relating to the commission of an offence against any law of Canada or a province on the part of any officer or employee of a government institution, if in the opinion of the Court there is evidence thereof.

Legislative History
1980-81-82-83, c. 111, Sch. I "47".

Autorisation de dénoncer des infractions

(2) Dans les cas où, à son avis, il existe des éléments de preuve touchant la perpétration d'infractions fédérales ou provinciales par un cadre ou employé d'une institution fédérale, la Cour peut faire part à l'autorité compétente des renseignements qu'elle détient à cet égard.

Historique
1980-81-82-83, ch. 111, ann. I «47».

Burden of proof

48. In any proceedings before the Court arising from an application under section 41 or 42, the burden of establishing that the head of a government institution is authorized to refuse to disclose a record requested under this Act or a part thereof shall be on the government institution concerned.

Legislative History
1980-81-82-83, c. 111, Sch. I "48".

Charge de la preuve

48. Dans les procédures découlant des recours prévus aux articles 41 ou 42, la charge d'établir le bien-fondé du refus de communication totale ou partielle d'un document incombe à l'institution fédérale concernée.

Historique
1980-81-82-83, ch. 111, ann. I «48».

Order of Court where no authorization to refuse disclosure found

49. Where the head of a government institution refuses to disclose a record requested under this Act or a part thereof on the basis of a provision of this Act not referred to in section 50, the Court shall, if it determines that the head of the institution is not authorized to refuse to disclose the record or part thereof, order the head of the institution to disclose the record or

Ordonnance de la Cour dans les cas où le refus n'est pas autorisé

49. La Cour, dans les cas où elle conclut au bon droit de la personne qui a exercé un recours en révision d'une décision de refus de communication totale ou partielle d'un document fondée sur des dispositions de la présente loi autres que celles mentionnées à l'article 50, ordonne, aux conditions qu'elle juge indiquées, au responsable de l'institution fédérale dont relève le

part thereof, subject to such conditions as the Court deems appropriate, to the person who requested access to the record, or shall make such other order as the Court deems appropriate.

Legislative History
1980-81-82-83, c. 111, Sch. I "49".

document en litige d'en donner à cette personne communication totale ou partielle; la Cour rend une autre ordonnance si elle l'estime indiqué.

Historique
1980-81-82-83, ch. 111, ann. I «49».

Order of Court where reasonable grounds of injury not found

50. Where the head of a government institution refuses to disclose a record requested under this Act or a part thereof on the basis of section 14 or 15 or paragraph 16(1)(*c*) or (*d*) or 18(*d*), the Court shall, if it determines that the head of the institution did not have reasonable grounds on which to refuse to disclose the record or part thereof, order the head of the institution to disclose the record or part thereof, subject to such conditions as the Court deems appropriate, to the person who requested access to the record, or shall make such other order as the Court deems appropriate.

Legislative History
1980-81-82-83, c. 111, Sch. I "50".

Recommended Change: That sections 49 and 50 be amended so as to provide a single de novo *standard of review.*

Recommended Change: That the Act be clarified to explicity establish the Federal Court's general jurisdiction to substitute its judgement for that of the government institution in interpreting the scope of all exemptions.

50. Dans les cas où le refus de communication totale ou partielle du document s'appuyait sur les articles 14 ou 15 ou sur les alinéas 16(1)*c*) ou *d*) ou 18*d*), la Cour, si elle conclut que le refus n'était pas fondé sur des motifs raisonnables, ordonne, aux conditions qu'elle juge indiquées, au responsable de l'institution fédérale dont relève le document en litige d'en donner communication totale ou partielle à la personne qui avait fait la demande; la Cour rend une autre ordonnance si elle l'estime indiqué.

Ordonnance de la Cour dans les cas où le préjudice n'est pas démontré

Historique
1980-81-82-83, ch. 111, ann. I «50».

Changement recommandé : Que les articles 49 et 50 soient modifiés de façon à établir une seule norme d'examen de novo.

Changement recommandé : Que la loi soit précisée de façon à poser expressément le principe que la Cour fédérale a toujours compétence pour substituer son jugement à celui de l'institution gouvernementale intéressée afin d'interpréter la portée de toutes les exceptions.

Order of Court not to disclose record

51. Where the Court determines, after considering an application under section 44, that the head of a

51. La Cour, dans les cas où elle conclut, lors d'un recours exercé en vertu de l'article 44, que le

Ordonnance de la Cour obligeant au refus

government institution is required to refuse to disclose a record or part of a record, the Court shall order the head of the institution not to disclose the record or part thereof or shall make such other order as the Court deems appropriate.

Legislative History
1980-81-82-83, c. 111, Sch. I "51".

responsable d'une institution fédérale est tenu de refuser la communication totale ou partielle d'un document, lui ordonne de refuser cette communication; elle rend une autre ordonnance si elle l'estime indiqué.

Historique
1980-81-82-83, ch. 111, ann. I «51».

Applications relating to international affairs or defence

52. (1) Any application under section 41 or 42 relating to a record or a part of a record that the head of a government institution has refused to disclose by reason of paragraph 13(1)(*a*) or (*b*) or section 15 shall be heard and determined by the Associate Chief Justice of the Federal Court or by such other judge of the Court as the Associate Chief Justice may designate to hear such applications.

52. (1) Les recours visés aux articles 41 ou 42 et portant sur les cas où le refus de donner communication totale ou partielle du document en litige s'appuyait sur les alinéas 13(1)*a*) ou *b*) ou sur l'article 15 sont exercés devant le juge en chef adjoint de la Cour fédérale ou tout autre juge de cette Cour qu'il charge de leur audition.

Affaires internationales et défense

Special rules for hearings

(2) An application referred to in subsection (1) or an appeal brought in respect of such application shall

(*a*) be heard *in camera*; and

(*b*) on the request of the head of the government institution concerned, be heard and determined in the National Capital Region described in the schedule to the *National Capital Act*.

(2) Les recours visés au paragraphe (1) font, en premier ressort ou en appel, l'objet d'une audition à huis clos; celle-ci a lieu dans la région de la capitale nationale définie à l'annexe de la *Loi sur la capitale nationale* si le responsable de l'institution fédérale concernée le demande.

Règles spéciales

Ex parte representations

(3) During the hearing of an application referred to in subsection (1) or an appeal brought in respect of such application, the head of the government institution concerned shall, on the request of the head of the institution, be given the opportunity to make representations *ex parte*.

(3) Le responsable de l'institution fédérale concernée a, au cours des auditions, en première instance ou en appel et sur demande, le droit de présenter des arguments en l'absence d'une autre partie.

Présentation d'arguments en l'absence d'une partie

Historique
1980-81-82-83, ch. 111, ann. I «52».

Legislative History
1980-81-82-83, c. 111, Sch. I "52".

Costs

53. (1) Subject to subsection (2), the costs of and incidental to all proceedings in the Court under this Act shall be in the discretion of the Court and shall follow the event unless the Court orders otherwise.

Frais et dépens

53. (1) Sous réserve du paragraphe (2), les frais et dépens sont laissés à l'appréciation de la Cour et suivent, sauf ordonnance contraire de la Cour, le sort du principal.

Idem

(2) Where the Court is of the opinion that an application for review under section 41 or 42 has raised an important new principle in relation to this Act, the Court shall order that costs be awarded to the applicant even if the applicant has not been successful in the result.

Idem

(2) Dans les cas où elle estime que l'objet des recours visés aux articles 41 et 42 a soulevé un principe important et nouveau quant à la présente loi, la Cour accorde les frais et dépens à la personne qui a exercé le recours devant elle, même si cette personne a été déboutée de son recours.

Legislative History
1980-81-82-83, c. 111, Sch. I "53".

Historique
1980-81-82-83, ch. 111, ann. I «53».

OFFICE OF THE INFORMATION COMMISSIONER

COMMISSARIAT À L'INFORMATION

Information Commissioner

Commissaire à l'information

Information Commissioner

54. (1) The Governor in Council shall, by commission under the Great Seal, appoint an Information Commissioner after approval of the appointment by resolution of the Senate and House of Commons.

Commissaire à l'information

54. (1) Le gouverneur en conseil nomme le Commissaire à l'information par commission sous le grand sceau, après approbation par résolution du Sénat et de la Chambre des communes.

Tenure of office and removal

(2) Subject to this section, the Information Commissioner holds office during good behaviour for a term of seven years, but may be removed by the Governor in Council at any time on address of the Senate and House of Commons.

Durée du mandat et révocation

(2) Sous réserve des autres dispositions du présent article, le Commissaire à l'information occupe sa charge à titre inamovible pour un mandat de sept ans, sauf révocation par le gouverneur en conseil sur adresse du Sénat et de la Chambre des communes.

Further terms

(3) The Information Commissioner, on the expiration of a first or any subsequent term of office, is eligible to be re-appointed for a further term not exceeding seven years.

(3) Le mandat du Commissaire à l'information est renouvelable pour des périodes maximales de sept ans chacune.

Renouvellement du mandat

Absence or incapacity

(4) In the event of the absence or incapacity of the Information Commissioner, or if the office of Information Commissioner is vacant, the Governor in Council may appoint another qualified person to hold office instead of the Commissioner for a term not exceeding six months, and that person shall, while holding that office, have all of the powers, duties and functions of the Information Commissioner under this or any other Act of Parliament and be paid such salary or other remuneration and expenses as may be fixed by the Governor in Council.

(4) En cas d'absence ou d'empêchement du Commissaire à l'information ou de vacance de son poste, le gouverneur en conseil peut confier à toute personne compétente, pour un mandat maximal de six mois, les pouvoirs et fonctions conférés au titulaire du poste par la présente loi ou une autre loi fédérale et fixer la rémunération et les frais auxquels cette personne aura droit.

Absence ou empêchement

Legislative History
1980-81-82-83, c. 111, Sch. I "54".

Historique
1980-81-82-83, ch. 111, ann. I «54».

Rank, powers and duties generally

55. (1) The Information Commissioner shall rank as and have all the powers of a deputy head of a department, shall engage exclusively in the duties of the office of Information Commissioner under this or any other Act of Parliament and shall not hold any other office under Her Majesty for reward or engage in any other employment for reward.

55. (1) Le Commissaire à l'information a rang et pouvoirs d'administrateur général de ministère; il se consacre exclusivement à la charge que lui confère la présente loi ou une autre loi fédérale, à l'exclusion de toute autre charge rétribuée au service de Sa Majesté ou de tout autre emploi rétribué.

Rang, pouvoirs et fonctions

Salary and expenses

(2) The Information Commissioner shall be paid a salary equal to the salary of a judge of the Federal Court, other than the Chief Justice or the Associate Chief Justice of that Court, and is entitled to be paid reasonable travel and living expenses incurred in the

(2) Le Commissaire à l'information reçoit le même traitement qu'un juge de la Cour fédérale autre que le juge en chef ou que le juge en chef adjoint; il a droit aux frais de déplacement et de séjour entraînés par l'exercice des fonctions

Traitement et frais

performance of duties under this or any other Act of Parliament.

que lui confèrent la présente loi ou une autre loi fédérale.

Pension benefits

(3) The provisions of the *Public Service Superannuation Act*, other than those relating to tenure of office, apply to the Information Commissioner, except that a person appointed as Information Commissioner from outside the Public Service, as defined in the *Public Service Superannuation Act*, may, by notice in writing given to the President of the Treasury Board not more than sixty days after the date of appointment, elect to participate in the pension plan provided in the *Diplomatic Service (Special) Superannuation Act*, in which case the provisions of that Act, other than those relating to tenure of office, apply to the Information Commissioner from the date of appointment and the provisions of the *Public Service Superannuation Act* do not apply.

(3) Les dispositions de la *Loi sur la pension de la fonction publique* qui ne traitent pas d'occupation de poste s'appliquent au Commissaire à l'information; toutefois, s'il est choisi en dehors de la fonction publique, au sens de la loi mentionnée ci-dessus, il peut, par avis adressé au président du Conseil du Trésor dans les soixante jours suivant sa date de nomination, choisir de cotiser au régime de pension prévu par la *Loi sur la pension spéciale du service diplomatique*; dans ce cas, il est assujetti aux dispositions de cette loi qui ne traitent pas d'occupation de poste.

Régime de pension

Other benefits

(4) The Information Commissioner is deemed to be employed in the public service of Canada for the purposes of the *Government Employees Compensation Act* and any regulations made under section 9 of the *Aeronautics Act*.

(4) Le Commissaire à l'information est réputé faire partie de l'administration publique fédérale pour l'application de la *Loi sur l'indemnisation des agents de l'État* et des règlements pris en vertu de l'article 9 de la *Loi sur l'aéronautique*.

Autres avantages

Legislative History
1980-81-82-83, c. 111, Sch. I "55".

Historique
1980-81-82-83, ch. 111, ann. I «55».

Assistant Information Commissioner

Commissaires adjoints à l'information

Appointment of Assistant Information Commissioner

56. (1) The Governor in Council may, on the recommendation of the Information Commissioner, appoint

56. (1) Le gouverneur en conseil peut, sur recommandation du Commissaire à l'information, nommer un ou plusieurs

Nomination

one or more Assistant Information Commissioners.

commissaires adjoints à l'information.

Tenure of office and removal of Assistant Information Commissioner

(2) Subject to this section, an Assistant Information Commissioner holds office during good behaviour for a term not exceeding five years.

(2) Sous réserve des autres dispositions du présent article, l'adjoint occupe son poste à titre inamovible pour un mandat maximal de cinq ans.

Durée du mandat

Further terms

(3) An Assistant Information Commissioner, on the expiration of a first or any subsequent term of office, is eligible to be re-appointed for a further term not exceeding five years.

(3) Le mandat de l'adjoint est renouvelable pour des périodes maximales de cinq ans chacune.

Renouvellement du mandat

Legislative History
1980-81-82-83, c. 111, Sch. I "56".

Historique
1980-81-82-83, ch. 111, ann. I «56».

Duties generally

57. (1) An Assistant Information Commissioner shall engage exclusively in such duties or functions of the office of the Information Commissioner under this or any other Act of Parliament as are delegated by the Information Commissioner to that Assistant Information Commissioner and shall not hold any other office under Her Majesty for reward or engage in any other employment for reward.

57. (1) L'adjoint se consacre exclusivement aux fonctions de la charge du Commissaire à l'information que celui-ci lui délègue, à l'exclusion de toutes autres fonctions rétribuées au service de Sa Majesté ou de tout autre emploi rétribué.

Fonctions

Salary and expenses

(2) An Assistant Information Commissioner is entitled to be paid a salary to be fixed by the Governor in Council and such travel and living expenses incurred in the performance of duties under this or any other Act of Parliament as the Information Commissioner considers reasonable.

(2) L'adjoint reçoit le traitement que fixe le gouverneur en conseil et il a droit aux frais de déplacement et de séjour que le Commissaire à l'information estime entraînés par l'exercice des fonctions que lui confèrent la présente loi ou une autre loi fédérale.

Traitement et frais

Pension benefits

(3) The provisions of the *Public Service Superannuation Act*, other than those relating to tenure of office, apply to an Assistant Information Commissioner.

(3) Les dispositions de la *Loi sur la pension de la fonction publique* qui ne traitent pas d'occupation de poste s'appliquent à l'adjoint.

Régime de pension

Other benefits

(4) An Assistant Information Commissioner is deemed to be employed in the public service of Canada for the purposes of the *Government Employees Compensation Act* and any regulations made under section 9 of the *Aeronautics Act*.

Legislative History
1980-81-82-83, c. 111, Sch. I "57".

Autres avantages

(4) L'adjoint est réputé faire partie de l'administration publique fédérale pour l'application de la *Loi sur l'indemnisation des agents de l'État* et des règlements pris en vertu de l'article 9 de la *Loi sur l'aéronautique*.

Historique
1980-81-82-83, ch. 111, ann. I «57».

Staff

Personnel

Staff of the Information Commissioner

58. (1) Such officers and employees as are necessary to enable the Information Commissioner to perform the duties and functions of the Commissioner under this or any other Act of Parliament shall be appointed in accordance with the *Public Service Employment Act*.

Personnel

58. (1) La *Loi sur l'emploi dans la fonction publique* s'applique au personnel dont le Commissaire à l'information a besoin pour l'exercice des pouvoirs et fonctions que lui confèrent la présente loi ou une autre loi fédérale.

Technical assistance

(2) The Information Commissioner may engage on a temporary basis the services of persons having technical or specialized knowledge of any matter relating to the work of the Commissioner to advise and assist the Commissioner in the performance of the duties and functions of the Commissioner under this or any other Act of Parliament and, with the approval of the Treasury Board, may fix and pay the remuneration and expenses of those persons.

Legislative History
1980-81-82-83, c. 111, Sch. I "58".

Assistance technique

(2) Le Commissaire à l'information peut retenir temporairement les services d'experts ou de spécialistes dont la compétence lui est utile dans l'exercice des fonctions que lui confèrent la présente loi ou une autre loi fédérale; il peut fixer, avec l'approbation du Conseil du Trésor, leur rémunération et leurs frais.

Historique
1980-81-82-83, ch. 111, ann. I «58».

Delegation

Délégation

Delegation by Information Commissioner

59. (1) Subject to subsection (2), the Information Commissioner may authorize any person to exercise or perform, subject to such restrictions or limitations as the Commissioner may specify, any of the powers, duties or functions of the Commissioner under this or any other Act of Parliament except

Pouvoir de délégation

59. (1) Sous réserve du paragraphe (2), le Commissaire à l'information peut, dans les limites qu'il fixe, déléguer les pouvoirs et fonctions que lui confèrent la présente loi ou une autre loi fédérale, sauf :

(*a*) in any case other than a delegation to an Assistant Information Commissioner, the power to delegate under this section; and

a) le pouvoir même de délégation, qui ne peut être délégué qu'à un commissaire adjoint;

(*b*) in any case, the powers, duties or functions set out in sections 38 and 39.

b) les pouvoirs et fonctions énoncés aux articles 38 et 39, qui ne peuvent être délégués à quiconque.

Delegations of investigations relating to international affairs and defence

(2) The Information Commissioner may not, nor may an Assistant Information Commissioner, delegate the investigation of any complaint resulting from a refusal by the head of a government institution to disclose a record or a part of a record by reason of paragraph 13(1)(*a*) or (*b*) or section 15 except to one of a maximum of four officers or employees of the Commissioner specifically designated by the Commissioner for the purpose of conducting those investigations.

Affaires internationales et défense

(2) Le Commissaire à l'information ou un commissaire adjoint ne peuvent déléguer la tenue des enquêtes portant sur les cas où le refus de communication totale ou partielle d'un document se fonde sur les alinéas 13(1)*a*) ou *b*) ou l'article 15 qu'à un de leurs collaborateurs pris parmi quatre des cadres ou employés du commissariat et que le Commissaire désigne spécialement à cette fin.

Delegation by Assistant Information Commissioner

(3) An Assistant Information Commissioner may authorize any person to exercise or perform, subject to such restrictions or limitations as the Assistant Information Commissioner may specify, any of the powers, duties or functions of the Information Commissioner under this or any

Pouvoir de subdélégation de l'adjoint

(3) Un commissaire adjoint à l'information peut, dans les limites qu'il fixe, subdéléguer les pouvoirs et fonctions que lui délègue le Commissaire en vertu de la présente loi ou d'une autre loi fédérale.

other Act of Parliament that the Assistant Information Commissioner is authorized by the Information Commissioner to exercise or perform.

Legislative History
1980-81-82-83, c. 111, Sch. I "59".

Historique
1980-81-82-83, ch. 111, ann. I «59»; 1984, ch. 40, art. 79.

General

Dispositions générales

Principal office

60. The principal office of the Information Commissioner shall be in the National Capital Region described in the schedule to the *National Capital Act*.

Legislative History
1980-81-82-83, c. 111, Sch. I "60".

Siège

60. Le siège du Commissariat à l'information est fixé dans la région de la capitale nationale définie à l'annexe de la *Loi sur la capitale nationale*.

Historique
1980-81-82-83, ch. 111, ann. I «60».

Security requirements

61. The Information Commissioner and every person acting on behalf or under the direction of the Commissioner who receives or obtains information relating to any investigation under this or any other Act of Parliament shall, with respect to access to and the use of that information, satisfy any security requirements applicable to, and take any oath of secrecy required to be taken by, persons who normally have access to and use of that information.

Legislative History
1980-81-82-83, c. 111, Sch. I "61".

Normes de sécurité

61. Le Commissaire à l'information et les personnes agissant en son nom ou sous son autorité qui reçoivent ou recueillent des renseignements dans le cadre des enquêtes prévues par la présente loi ou une autre loi fédérale sont tenus, quant à l'accès à ces renseignements et leur utilisation, de satisfaire aux normes applicables en matière de sécurité et de prêter les serments imposés à leurs usagers habituels.

Historique
1980-81-82-83, ch. 111, ann. I «61».

Confidentiality

62. Subject to this Act, the Information Commissioner and every person acting on behalf or under the direction of the Commissioner shall not disclose any information that comes to their knowledge in the performance of their duties and functions under this Act.

Secret

62. Sous réserve des autres dispositions de la présente loi, le Commissaire à l'information et les personnes agissant en son nom ou sous son autorité sont tenus au secret en ce qui concerne les renseignements dont ils prennent connaissance dans l'exercice des

Legislative History
1980-81-82-83, c. 111, Sch. I "62".

pouvoirs et fonctions que leur confère la présente loi.

Historique
1980-81-82-83, ch. 111, ann. I «62».

Disclosure authorized

63. (1) The Information Commissioner may disclose or may authorize any person acting on behalf or under the direction of the Commissioner to disclose information

(*a*) that, in the opinion of the Commissioner, is necessary to:

(i) carry out an investigation under this Act, or

(ii) establish the grounds for findings and recommendations contained in any report under this Act; or

(*b*) in the course of a prosecution for an offence under this Act, a prosecution for an offence under section 131 of the *Criminal Code* (perjury) in respect of a statement made under this Act, a review before the Court under this Act or an appeal therefrom.

Divulgation autorisée

63. (1) Le Commissaire à l'information peut divulguer, ou autoriser les personnes agissant en son nom ou sous son autorité à divulguer, les renseignements :

a) qui, à son avis, sont nécessaires pour :

(i) mener une enquête prévue par la présente loi,

(ii) motiver les conclusions et recommandations contenues dans les rapports et comptes rendus prévus par la présente loi;

b) dont la divulgation est nécessaire, soit dans le cadre des procédures intentées pour infraction à la présente loi ou pour une infraction à l'article 131 du *Code criminel* (parjure) se rapportant à une déclaration faite en vertu de la présente loi, soit lors d'un recours en révision prévu par la présente loi devant la Cour ou lors de l'appel de la décision rendue par celle-ci.

Disclosure of offence authorized

(2) The Information Commissioner may disclose to the Attorney General of Canada information relating to the commission of an offence against any law of Canada or a province on the part of any officer or employee of a government institution if in the opinion of the Commissioner there is evidence thereof.

Dénonciation autorisée

(2) Dans les cas où, à son avis, il existe des éléments de preuve touchant la perpétration d'infractions fédérales ou provinciales par un cadre ou employé d'une institution fédérale, le Commissaire à l'information peut faire part au procureur général du Canada des renseignements qu'il détient à cet égard.

Legislative History
1980-81-82-83, c. 111, Sch. I "63"; R.S., 1985, c. A-1, s. 63; R.S., c. 27 (1st Supp.), s. 187 (Sch. V, item 1(2)).

Historique
1980-81-82-83, ch. 111, ann. I «63»; L.R. (1985), ch. A-1, art. 63; L.R. (1985), ch. 27 (1er suppl.), art. 187 (ann. V, nº 1(2)).

Information not to be disclosed

64. In carrying out an investigation under this Act and in any report made to Parliament under section 38 or 39, the Information Commissioner and any person acting on behalf or under the direction of the Information Commissioner shall take every reasonable precaution to avoid the disclosure of, and shall not disclose,

(*a*) any information or other material on the basis of which the head of a government institution would be authorized to refuse to disclose a part of a record requested under this Act; or

(*b*) any information as to whether a record exists where the head of a government institution, in refusing to give access to the record under this Act, does not indicate whether it exists.

Précautions à prendre

64. Lors des enquêtes prévues par la présente loi et dans la préparation des rapports au Parlement prévus aux articles 38 ou 39, le Commissaire à l'information et les personnes agissant en son nom ou sous son autorité ne peuvent divulguer et prennent toutes les précautions pour éviter que ne soient divulgués :

a) des renseignements qui, par leur nature, justifient, en vertu de la présente loi, un refus de communication totale ou partielle d'un document;

b) des renseignements faisant état de l'existence d'un document que le responsable d'une institution fédérale a refusé de communiquer sans indiquer s'il existait ou non.

Historique
1980-81-82-83, ch. 111, ann. I «64».

Legislative History
1980-81-82-83, c. 111, Sch. I "64".

No summons

65. The Information Commissioner or any person acting on behalf or under the direction of the Commissioner is not a competent or compellable witness, in respect of any matter coming to the knowledge of the Commissioner or that person as a result of performing any duties or functions under this Act during an investigation, in any proceedings other than a prosecution for an offence under this Act, a prosecution for an offence under section 131 of the *Criminal Code* (perjury) in

Non-assignation

65. En ce qui concerne les questions venues à leur connaissance dans l'exercice, au cours d'une enquête, des pouvoirs et fonctions qui leur sont conférés en vertu de la présente loi, le Commissaire à l'information et les personnes qui agissent en son nom ou sur son ordre n'ont qualité pour témoigner ou ne peuvent y être contraints que dans les procédures intentées pour infraction à la présente loi ou pour une infraction à l'article 131 du *Code criminel* (parjure) se rapportant à une déclaration faite en

respect of a statement made under this Act, a review before the Court under this Act or an appeal therefrom.

Legislative History
1980-81-82-83, c. 111, Sch. I "65"; R.S., 1985, c. A-1, s. 65; R.S., 1985, c. 27 (1st Supp.), s. 187 (Sch. V, item 1(3)).

vertu de la présente loi, soit lors d'un recours en révision prévu par la présente loi devant la Cour ou lors de l'appel de la décision rendue par celle-ci.

Historique
1980-81-82-83, ch. 111, ann. I «65»; L.R. (1985), ch. A-1, art. 65; L.R. (1985), ch. 27 (1er suppl.), art. 187 (ann. V, nº 1(3)).

Protection of Information Commissioner

66. (1) No criminal or civil proceedings lie against the Information Commissioner, or against any person acting on behalf or under the direction of the Commissioner, for anything done, reported or said in good faith in the course of the exercise or performance or purported exercise or performance of any power, duty or function of the Commissioner under this Act.

66. (1) Le Commissaire à l'information et les personnes qui agissent en son nom ou sous son autorité bénéficient de l'immunité en matière civile ou pénale pour les actes accomplis, les rapports ou comptes rendus établis et les paroles prononcées de bonne foi dans l'exercice effectif ou censé tel des pouvoirs et fonctions qui lui sont conférés en vertu de la présente loi. Immunité du Commissaire à l'information

Libel or slander

(2) For the purposes of any law relating to libel or slander,

(*a*) anything said, any information supplied or any document or thing produced in good faith in the course of an investigation by or on behalf of the Information Commissioner under this Act is privileged; and

(*b*) any report made in good faith by the Information Commissioner under this Act and any fair and accurate account of the report made in good faith in a newspaper or any other periodical publication or in a broadcast is privileged.

(2) Ne peuvent donner lieu à poursuites pour diffamation verbale ou écrite : Diffamation

a) les paroles prononcées, les renseignements fournis ou les pièces produites de bonne foi au cours d'une enquête menée par le Commissaire à l'information ou en son nom dans le cadre de la présente loi;

b) les rapports ou comptes rendus établis de bonne foi par le Commissaire à l'information dans le cadre de la présente loi, ainsi que les relations qui en sont faites de bonne foi par la presse écrite ou audio-visuelle.

Legislative History
1980-81-82-83, c. 111, Sch. I "66".

Historique
1980-81-82-83, ch. 111, ann. I «66».

OFFENCES

Obstruction

67. (1) No person shall obstruct the Information Commissioner or any person acting on behalf or under the direction of the Commissioner in the performance of the Commissioner's duties and functions under this Act.

Offence and punishment

(2) Every person who contravenes this section is guilty of an offence and liable on summary conviction to a fine not exceeding one thousand dollars.

Legislative History

1980-81-82-83, c. 111, Sch. I "67".

INFRACTIONS

Entrave

67. (1) Il est interdit d'entraver l'action du Commissaire à l'information ou des personnes qui agissent en son nom ou sous son autorité dans l'exercice des pouvoirs et fonctions qui lui sont conférés en vertu de la présente loi.

Infraction et peine

(2) Quiconque contrevient au présent article est coupable d'une infraction et passible, sur déclaration de culpabilité par procédure sommaire, d'une amende maximale de mille dollars.

Historique

1980-81-82-83, ch. 111, ann. I «67».

GENERAL

DISPOSITIONS GÉNÉRALES

Act does not apply to certain materials

68. This Act does not apply to

(*a*) published material or material available for purchase by the public;

(*b*) library or museum material preserved solely for public reference or exhibition purpose; or

(*c*) material placed in the National Archives of Canada, the National Library, the National Gallery of Canada, the Canadian Museum of Civilization, the Canadian Museum of Nature or the National Museum of Science and Technology by or on behalf of persons or organizations other than government institutions.

Non-application de la loi

68. La présente loi ne s'applique pas aux documents suivants :

a) les documents publiés ou mis en vente dans le public;

b) les documents de bibliothèque ou de musée conservés uniquement à des fins de référence ou d'exposition pour le public;

c) les documents déposés aux Archives nationales du Canada, à la Bibliothèque nationale, au Musée des beaux-arts du Canada, au Musée canadien des civilisations, au Musée canadien de la nature ou au Musée national des sciences et de la technologie par ou pour des personnes ou organisations extérieures aux institutions fédérales.

Legislative History

1980-81-82-83, c. 111, Sch. I "68"; R.S., 1985, c. A-1, s. 68; R.S., 1985, c. 1 (3rd Supp.), s. 12(5) (Sch., item 1(1)); 1990, c. 3, s. 32 (Sch., item 1(1)); 1992, c. 1, s. 143 (Sch. VI, item 1(E)).

Recommended Change: That section 68 be amended to eliminate the exclusion of published material from the coverage of the legislation, and that, in addition, that government institutions are required to organize, catalogue and advise the public of the existence of all government publications, including grey literature, through the inventory and government locator system described in section 5.

Historique

1980-81-82-83, ch. 111, ann. I «68»; L.R. (1985), ch. A-1, art. 68; L.R. (1985), ch. 1 (3e suppl.), par. 12(5) (ann., nº 1(1)); 1990, ch. 3, art. 32 (ann., nº 1(1)); 1992, ch. 1, art. 143 (ann. VI, nº 1(A)).

Changement recommandé : Que l'article 68 soit modifié de façon à ce que les documents publiés deviennent assujettis à la Loi et que les institutions gouvernementales soient tenues de corriger et de répertorier toutes les publications gouvernementales, y compris les documents «gris», ainsi que d'informer le public de leur existence grâce au système gouvernemental de répertoires et de localisation de l'information décrit sous la rubrique Accès et technologie de l'information.

Confidences of the Queen's Privy Council for Canada

69. (1) This Act does not apply to confidences of the Queen's Privy Council for Canada, including, without restricting the generality of the foregoing,

(*a*) memoranda the purpose of which is to present proposals or recommendations to Council;

(*b*) discussion papers the purpose of which is to present background explanations, analyses of problems or policy options to Council for consideration by Council in making decisions;

(*c*) agenda of Council or records recording deliberations or decisions of Council;

(*d*) records used for or reflecting communications or discussions between ministers of the

Documents confidentiels du Conseil privé de la Reine pour le Canada

69. (1) La présente loi ne s'applique pas aux documents confidentiels du Conseil privé de la Reine pour le Canada, notamment aux :

a) notes destinées à soumettre des propositions ou recommandations au Conseil;

b) documents de travail destinés à présenter des problèmes, des analyses ou des options politiques à l'examen du Conseil;

c) ordres du jour du Conseil ou procès-verbaux de ses délibérations ou décisions;

d) documents employés en vue ou faisant état de communications ou de discussions entre ministres sur des questions liées à la prise des décisions du gouvernement ou à la formulation de sa politique;

Crown on matters relating to the making of government decisions or the formulation of government policy;

(*e*) records the purpose of which is to brief ministers of the Crown in relation to matters that are before, or are proposed to be brought before, Council or that are the subject of communications or discussions referred to in paragraph (*d*);

(*f*) draft legislation; and

(*g*) records that contain information about the contents of any record within a class of records referred to in paragraphs (*a*) to (*f*).

e) documents d'information à l'usage des ministres sur des questions portées ou qu'il est prévu de porter devant le Conseil, ou sur des questions qui font l'objet des communications ou discussions visées à l'alinéa *d*);

f) avant-projets de loi ou projets de règlement;

g) documents contenant des renseignements relatifs à la teneur des documents visés aux alinéas *a*) à *f*).

Definition of "Council"

(2) For the purposes of subsection (1), "Council" means the Queen's Privy Council for Canada, committees of the Queen's Privy Council for Canada, Cabinet and committees of Cabinet.

(2) Pour l'application du paragraphe (1), «Conseil» s'entend du Conseil privé de la Reine pour le Canada, du Cabinet et de leurs comités respectifs.

Définition de «Conseil»

Exception

(3) Subsection (1) does not apply to

(*a*) confidences of the Queen's Privy Council for Canada that have been in existence for more than twenty years; or

(*b*) discussion papers described in paragraph (1)(*b*)

(i) if the decisions to which the discussion papers relate have been made public, or

(ii) where the decisions have not been made public, if four years have passed since the decisions were made.

(3) Le paragraphe (1) ne s'applique pas :

a) aux documents confidentiels du Conseil privé de la Reine pour le Canada dont l'existence remonte à plus de vingt ans;

b) aux documents de travail visés à l'alinéa (1)*b*), dans les cas où les décisions auxquelles ils se rapportent ont été rendues publiques ou, à défaut de publicité, ont été rendues quatre ans auparavant.

Exception

Historique

1980-81-82-83, ch. 111, ann. I «69»; 1992, ch. 1, art. 144 (ann. VII, nº 3 (F)).

Legislative History
1980-81-82-83, c. 111, Sch. I "69"; 1992, c. 1, s. 144 (Sch. VII, item 3 (F)).

Recommended Change: That section 69 be amended to convert it into a mandatory, class exemption.

Recommended Change: The current twenty (20) year exemption covering the exclusion of Cabinet documents from the Act should be converted into a fifteen (15) year rule when documents fall outside the mandatory, class exemption for Cabinet confidences.

Recommended Change: That paragraph 69(3)(b) be redrafted to cover analysis portions of memoranda to Cabinet now made available to the Auditor General and that these be made releasable if a decision has been made public; the decision has been implemented; or five (5) years have passed since the decision was made or considered.

Recommended Change: That appeals of decisions under the Cabinet records exemption should be heard by the Associate Chief Justice of the Federal Court after review by the Information Commissioner.

Changement recommandé : Que l'article 69 soit modifié pour substituer à l'exclusion qu'il prévoit une exception générale pour toute la catégorie de documents en cause.

Changement recommandé : Que l'exception pour 20 ans qui assure la protection des documents du Cabinet exclus de l'application de la Loi soit convertie en une période de protection de 15 ans pour les documents confidentiels du Cabinet, après quoi ces documents ne pourraient être protégés par une exception qu'en vertu d'une autre disposition de la Loi.

Changement recommandé : Que l'alinéa 69(3)b) soit reformulé pour préciser que les parties analytiques des notes et des mémoires au Cabinet soient mises à la disposition du Vérificateur général et puissent être communiquées si une décision a été rendue publique ou mise en oeuvre, ou qu'il s'est écoulé cinq ans depuis la date à laquelle elle a été prise ou envisagée.

Changement recommandé : Que les appels interjetés des décisions de refuser de communiquer des renseignements fondées sur l'exception applicable aux documents du Cabinet soient entendus par le juge en chef adjoint de la Cour fédérale, après examen par le Commissaire à l'information.

Duties and functions of designated Minister

70. (1) Subject to subsection (2), the designated Minister shall

(*a*) cause to be kept under review the manner in which records under the control of government institutions are maintained and managed to ensure compliance with

Responsabilités du ministre désigné

70. (1) Sous réserve du paragraphe (2), le ministre désigné est responsable :

a) du contrôle des modalités de tenue et de gestion des documents relevant des institutions fédérales dans le but d'en assurer la

the provisions of this Act and the regulations relating to access to records;

(*b*) prescribe such forms as may be required for the operation of this Act and the regulations;

(*c*) cause to be prepared and distributed to government institutions directives and guidelines concerning the operation of this Act and the regulations; and

(*d*) prescribe the form of, and what information is to be included in, reports made to Parliament under section 72.

conformité avec la présente loi et ses règlements;

b) de l'établissement des formulaires nécessaires à la mise en oeuvre de la présente loi et de ses règlements;

c) de la rédaction des instructions et directives nécessaires à la mise en oeuvre de la présente loi et de ses règlements et de leur diffusion auprès des institutions fédérales;

d) de la détermination de la forme et du fond des rapports au Parlement visés à l'article 72.

Exception for Bank of Canada

(2) Anything that is required to be done by the designated Minister under paragraph (1)(*a*) or (*c*) shall be done in respect of the Bank of Canada by the Governor of the Bank of Canada.

(2) Les responsabilités du ministre désigné définies aux alinéas (1)*a*) et *c*) incombent, dans le cas de la Banque du Canada, au gouverneur de celle-ci.

Exception dans le cas de la Banque du Canada

Legislative History
1980-81-82-83, c. 111, Sch. I "70".

Recommended Change: That the President of the Treasury Board be named as the sole Minister responsible for the Access to Information Act.

Recommended Change: That the powers of the designated Minister should be revamped to provide the authority to guide government institutions in meeting the requirements to protect the public's right of access to government information.

Historique
1980-81-82-83, ch. 111, ann. I «70».

Changement recommandé : Que le président du Conseil du Trésor soit désigné seul ministre responsable de la Loi sur l'accès à l'information.

Changement recommandé : Que les pouvoirs du ministre désigné soient précisés de façon à l'investir des pouvoirs nécessaires pour aider les institutions gouvernementales à satisfaire aux exigences de la protection du droit d'accès du public à l'information gouvernementale.

Manuals may be inspected by public

71. (1) The head of every government institution shall, not later than July 1, 1985, provide facilities at the headquarters of the

71. (1) Chacun des responsables d'une institution fédérale est tenu, au plus tard le 1er juillet 1985, de fournir, au siège de l'institution et

Consultation des manuels

institution and at such offices of the institution as are reasonably practicable where the public may inspect any manuals used by employees of the institution in administering or carrying out programs or activities of the institution that affect the public.

dans les autres bureaux de l'institution où il est possible sans problèmes sérieux de le faire, des installations de consultation par le public des manuels dont se servent les fonctionnaires pour les programmes et les activités de l'institution qui touchent le public.

Exempt information may be excluded

(2) Any information on the basis of which the head of a government institution would be authorized to refuse to disclose a part of a record requested under this Act may be excluded from any manuals that may be inspected by the public pursuant to subsection (1).

(2) Les renseignements qui justifient de la part du responsable d'une institution fédérale un refus de communication totale ou partielle d'un document peuvent être enlevés des manuels visés au paragraphe (1).

Exclusion des renseignements protégés

Legislative History
1980-81-82-83, c. 111, Sch. I "71".

Historique
1980-81-82-83, ch. 111, ann. I «71».

Recommended Change: Amend subsection 71(1) to require government institutions to incorporate "Access Reading Room" activities with all government services centres and current access points for InfoSource.

*Changement recommandé : Que le paragraphe 71(1) soit modifié de façon à ce que les institutions gouvernementales soient tenues d'incorporer des salles de lecture d'accès dans tous leurs centres d'information et dans tous les points d'accès actuellement employés dans le cadre de l'*InfoSource.

Report to Parliament

72. (1) The head of every government institution shall prepare for submission to Parliament an annual report on the administration of this Act within the institution during each financial year.

72. (1) À la fin de chaque exercice, chacun des responsables d'une institution fédérale établit pour présentation au Parlement le rapport d'application de la présente loi en ce qui concerne son institution.

Rapports au Parlement

Tabling of report

(2) Every report prepared under subsection (1) shall be laid before each House of Parliament within three months after the financial year in respect of which it is made or, if that House is not then sitting, on any of the first fifteen days next thereafter that it is sitting.

(2) Dans les trois mois suivant la fin de chaque exercice, les rapports visés au paragraphe (1) sont déposés devant chaque chambre du Parlement ou, si elle ne siège pas, dans les quinze premiers jours de séance ultérieurs.

Remise des rapports

Reference to Parliamentary committee

(3) Every report prepared under subsection (1) shall, after it is laid before the Senate and the House of

(3) Les rapports déposés conformément au paragraphe (2) sont renvoyés devant le comité désigné ou

Renvoi en comité

Commons under subsection (2), be referred to the committee designated or established by Parliament for the purpose of subsection 75(1).

Legislative History
1980-81-82-83, c. 111, Sch. I "72".

Recommended Change: That a new Parliamentary Standing Committee be formed to deal with the challenges of the revolution in Information Technology and its impact on society.

Recommended Change: That the Committee set aside specific time each year to review the Annual Reports submitted by the Information Commissioner and government institutions and make recommendations for improving access to and dissemination of government information.

Recommended Change: That the new Committee either be given research funds or mandate the Office of the Information Commissioner to carry out research on information issues much like Congress mandates the Office of Technology Assessment in the United States.

constitué par le Parlement en application du paragraphe 75(1).

Historique
1980-81-82-83, ch. 111, ann. I «72».

Changement recommandé : Qu'un nouveau comité parlementaire permanent soit chargé d'étudier les questions pressantes de la révolution de l'information et de ses répercussions sur la société.

Changement recommandé : Que le nouveau Comité permanent consacre chaque année une partie de son temps à la tenue d'audiences sur le Rapport annuel du Commissaire à l'information et sur les rapports annuels concernant l'administration de la Loi déposés par les institutions fédérales et que ledit Comité ait mandat de faire des recommandations en vue d'améliorer constamment l'accès et la diffusion de l'information gouvernementale.

*Changement recommandé : Que le nouveau Comité ait un budget de recherche ou qu'il confie au Commissariat à l'information le mandat de faire de la recherche sur les questions d'information, en assumant un rôle analogue à celui que le Congrès des États-Unis confie à l'*Office of Technology Assessment.

Delegation by the head of a government institution

73. The head of a government institution may, by order, designate one or more officers or employees of that institution to exercise or perform any of the powers, duties or functions of the head of the institution under this Act that are specified in the order.

Pouvoir de délégation du responsable d'une institution

73. Le responsable d'une institution fédérale peut, par arrêté, déléguer certaines de ses attributions à des cadres ou employés de l'institution.

Historique
1980-81-82-83, ch. 111, ann. I «73».

Changement recommandé : Que toutes les institutions du

Legislative History
1980-81-82-83, c. 111, Sch. I "73".

Recommended Change: That all federal government institutions, including Special Operating Agencies and Crown Corporations, be covered by the Act, unless Parliament chooses to exclude an entity in explicit terms.

Recommended Observation: That the Department of Justice be instructed to create, maintain and make generally available to the public an up-to-date list of those institutions covered by the Access to Information Act.

Recommended Change: That special provision be made to exclude from the coverage of the Act all program materials of the C.B.C.

Recommended Change: That Parliament be asked to include in amended legislation coverage of the Senate, the House of Commons and all parliamentary agents, but excluding the offices of Senators and members of Parliament.

Recommended Change: That special provisions for determination of complaints and appeal be included in the Access to information Act *to enable the Office of the Information Commissioner to be covered by the legislation.*

Recommended Change: That where the federal government controls a public institution by means of a power of appointment over the majority of the members of the agency's governing body or committee, then the Act should apply to it.

gouvernement fédéral, y compris les organismes de services spéciaux et les sociétés d'État, soient assujettis à la Loi, à moins que le Parlement décide expressément d'exclure un organisme ou une société quelconques.

Observation recommandée : Que le ministère de la Justice soit chargé d'établir, de tenir et de mettre à la disposition du public une liste à jour des institutions assujetties à la Loi sur l'accès à l'information.

Changement recommandé : Qu'une disposition spéciale exclue toute la programmation de la Société Radio-Canada de l'application de la Loi sur l'accès à l'information.

Changement recommandé : Que le Parlement soit invité à modifier la Loi de façon à y assujettir le Sénat, la Chambre des communes, la Bibliothèque du Parlement et ses autres organismes mandataires, exception faite des bureaux des sénateurs et des députés.

Changement recommandé : Que des dispositions particulières sur le règlement des plaintes et des appels soient ajoutées à la Loi sur l'accès à l'information *pour que le Commissariat à l'information soit assujetti à la Loi.*

Changement recommandé : Que la Loi sur l'accès à l'information *s'applique aux institutions publiques dont le gouvernement fédéral a le pouvoir de nommer la majorité des membres du conseil ou du comité d'administration.*

Changement recommandé : Que les pouvoirs de réglementation de

Recommended Change: That the regulatory powers in section 77 of the Act be revised to enable them to reflect reasonableness in pricing and new, cheaper formats for presenting information, and rates and labour costs adjusted to reflect current levels.

Recommended Change: That provision be made in the Access to Information Act *for the removal from the official schedule maintained by the Department of Justice of institutions which are defunct or for some other reason are no longer subject to the legislation.*

Recommended Change: Undertake a full review of Crown Copyright to determine whether or not it is still relevant in the electronic world, and subsequent rapid amendment of the Copyright Act *once the review is completed.*

Recommended Change: Seek a legislative mandate for the Depository Services Program either in the National Library Act *or the* Access to Information Act *after a full review to establish the system's role in the dissemination of public government information in digital formats.*

l'article 77 de la Loi soient révisés de façon à refléter raisonnablement les prix et les nouveaux modes bon marché de présentation de l'information ainsi qu'à ajuster les taux et les coûts de main-d'oeuvre aux niveaux actuels.

Changement recommandé : Que la Loi sur l'accès à l'information *soit modifiée de façon à prévoir le retrait de l'Annexe de la liste officielle des institutions fédérales établie par le ministère de la Justice, des institutions qui n'existent plus ou qui ne sont plus assujetties à la Loi pour une raison quelconque.*

Changement recommandé : Qu'on procède à un examen complet du droit d'auteur de l'État pour déterminer si c'est une notion toujours pertinente dans l'univers électronique et pour qu'il soit possible de modifier rapidement la Loi sur le droit d'auteur *une fois l'examen mené à bien.*

Changement recommandé : Que le Programme des services aux dépositaires soit entériné par une loi, soit la Loi sur la Bibliothèque nationale, *soit la* Loi sur l'accès à l'information, *après qu'un examen complet aura été mené à bien pour définir le rôle des systèmes pertinents dans la distribution sous forme électronique de l'information gouvernementale publique.*

Protection from civil proceeding or from prosecution

74. Notwithstanding any other Act of Parliament, no civil or criminal proceedings lie against the head of any government institution, or against any person acting on behalf or under the direction of the head of a government institution, and no proceedings lie against the Crown or

Immunité

74. Nonobstant toute autre loi fédérale, le responsable d'une institution fédérale et les personnes qui agissent en son nom ou sous son autorité bénéficient de l'immunité en matière civile ou pénale, et la Couronne ainsi que les institutions fédérales bénéficient de l'immunité

any government institution, for the disclosure in good faith of any record or any part of a record pursuant to this Act, for any consequences that flow from that disclosure, or for the failure to give any notice required under this Act if reasonable care is taken to give the required notice.

Legislative History
1980-81-82-83, c. 111, Sch. I "74".

devant toute juridiction, pour la communication totale ou partielle d'un document faite de bonne foi dans le cadre de la présente loi ainsi que pour les conséquences qui en découlent; ils bénéficient également de l'immunité dans les cas où, ayant fait preuve de la diligence nécessaire, ils n'ont pu donner les avis prévus par la présente loi.

Historique
1980-81-82-83, ch. 111, ann. I «74».

Permanent review of Act by Parliamentary committee

75. (1) The administration of this Act shall be reviewed on a permanent basis by such committee of the House of Commons, of the Senate or of both Houses of Parliament as may be designated or established by Parliament for that purpose.

Examen permanent par un comité parlementaire

75. (1) Le Parlement désigne ou constitue un comité, soit de la Chambre des communes, soit du Sénat, soit mixte, chargé spécialement de l'examen permanent de l'application de la présente loi.

Review and report to Parliament

(2) The committee designated or established by Parliament for the purpose of subsection (1) shall, not later than July 1, 1986, undertake a comprehensive review of the provisions and operation of this Act, and shall within a year after the review is undertaken or within such further time as the House of Commons may authorize, submit a report to Parliament thereon including a statement of any changes the committee would recommend.

Rapport au Parlement

(2) Le comité prévu au paragraphe (1) entreprend, au plus tard le 1er juillet 1986, un examen approfondi des dispositions de la présente loi ainsi que des conséquences de son application en vue de la présentation, dans un délai d'un an à compter du début de l'examen ou tel délai plus long autorisé par la Chambre des communes, d'un rapport au Parlement où seront consignées ses conclusions ainsi que ses recommandations, s'il y a lieu, quant aux modifications qui seraient souhaitables.

Legislative History
1980-81-82-83, c. 111, Sch. I "75".

Historique
1980-81-82-83, ch. 111, ann. I «75».

Binding on Crown

76. This Act is binding on Her Majesty in Right of Canada.

La Couronne est liée

76. La présente loi lie Sa Majesté du chef du Canada.

Legislative History
1980-81-82-83, c. 111, Sch. I "76".

Historique
1980-81-82-83, ch. 111, ann. I «76».

Regulations

77. (1) The Governor in Council may make regulations

(*a*) prescribing limitations in respect of records that can be produced from machine readable records for the purpose of subsection 4(3);

(*b*) prescribing the procedure to be followed in making and responding to a request for access to a record under this Act;

(*c*) prescribing, for the purpose of subsection 8(1), the conditions under which a request may be transferred from one government institution to another;

(*d*) prescribing a fee for the purpose of paragraph 11(1)(*a*) and the manner of calculating fees or amounts payable for the purposes of paragraphs 11(1)(*b*) and (*c*) and subsections 11(2) and (3);

(*e*) prescribing, for the purpose of subsection 12(1), the manner or place in which access to a record or a part thereof shall be given;

(*f*) specifying investigative bodies for the purpose of paragraph 16(1)(*a*);

(*g*) specifying classes of investigations for the purpose of paragraph 16(4)(*c*); and

(*h*) prescribing the procedures to be followed by the Information Commissioner and any person acting on behalf or under the direction of the Information Commissioner in examining or obtaining copies of records relevant to an investigation of a complaint in respect of a refusal

77. (1) Le gouverneur en conseil peut, par règlement :

Règlements

a) prévoir, pour l'application du paragraphe 4(3), les restrictions applicables à la préparation des documents issus de documents informatisés;

b) établir les formalités à suivre pour les demandes de communication de documents et les réponses à y apporter;

c) fixer, pour l'application du paragraphe 8(1), les conditions de transmission des demandes d'une institution fédérale à une autre;

d) fixer le montant des droits prévus à l'alinéa 11(1)*a*) et déterminer le mode de calcul du montant exigible en vertu des alinéas 11(1)*b*) et *c*) et des paragraphes 11(2) et (3);

e) déterminer, pour l'application du paragraphe 12(1), les modalités d'exercice de l'accès aux documents ou le lieu de leur consultation;

f) déterminer les organismes d'enquête prévus à l'alinéa 16(1)*a*);

g) préciser les catégories d'enquêtes pour l'application de l'alinéa 16(4)*c*);

h) fixer les règles à suivre par le Commissaire à l'information et les personnes agissant en son nom ou sous son autorité en ce qui a trait à l'examen ou à l'obtention de copies des documents dont ils ont à prendre connaissance au cours des enquêtes portant sur des refus de

to disclose a record or a part of a record under paragraph 13(1)(*a*) or (*b*) or section 15.

communication totale ou partielle fondés sur les alinéas 13(1)*a*) ou *b*) ou l'article 15.

Additions to Schedule I

(2) The Governor in Council may, by order, amend Schedule I by adding thereto any department, ministry of state, body or office of the Government of Canada.

(2) Le gouverneur en conseil peut, par décret, ajouter à l'annexe I tout ministère, département d'État ou organisme de l'administration fédérale.

Additions à l'ann. I

Legislative History

1980-81-82-83, c. 111, Sch. I "77"; 1992, c. 21, s. 5.

Historique

1980-81-82-83, ch. 111, ann. I «77» 1984, ch. 40, art. 79; 1992, ch. 21, art. 5.

CANADA EVIDENCE ACT

LOI SUR LA PREUVE AU CANADA

Disclosure of Government Information

Divulgation de renseignements administratifs

Objection to disclosure of information

37. (1) A minister of the Crown in right of Canada or other person interested may object to the disclosure of information before a court, person or body with jurisdiction to compel the production of information by certifying orally or in writing to the court, person or body that the information should not be disclosed on the grounds of a specified public interest.

Opposition à divulgation

37. (1) Un ministre fédéral ou toute autre personne intéressée peut s'opposer à la divulgation de renseignements devant un tribunal, un organisme ou une personne ayant le pouvoir de contraindre à la production de renseignements, en attestant verbalement ou par écrit devant eux que ces renseignements ne devraient pas être divulgués pour des raisons d'intérêt public déterminées.

Where objection made to superior court

(2) Subject to sections 38 and 39, where an objection to the disclosure of information is made under subsection (1) before a superior court, that court may examine or hear the information and order its disclosure, subject to such restrictions or conditions as it deems appropriate, if it concludes that, in the circumstances of the case, the public interest in disclosure outweighs in importance the specified public interest.

Opposition devant une cour supérieure

(2) Sous réserve des articles 38 et 39, dans les cas où l'opposition visée au paragraphe (1) est portée devant une cour supérieure, celle-ci peut prendre connaissance des renseignements et ordonner leur divulgation, sous réserve des restrictions ou conditions qu'elle estime indiquées, si elle conclut qu'en l'espèce, les raisons d'intérêt public qui justifient la divulgation l'emportent sur les raisons d'intérêt public invoquées lors de l'attestation.

Where objection not made to superior court

(3) Subject to sections 38 and 39, where an objection to the disclosure of information is made under subsection (1) before a court, person or body other than a superior court, the objection may be determined, on application, in accordance with subsection (2) by

Opposition devant une autre instance

(3) Sous réserve des articles 38 et 39, dans les cas où l'opposition visée au paragraphe (1) est portée devant le tribunal, un organisme ou une personne qui ne constituent pas une cour supérieure, la question peut être décidée conformément au paragraphe (2), sur demande, par :

(a) the Federal Court—Trial Division, in the case of a person or body vested with power to compel production by or pursuant to an Act of Parliament if the person or body is not a court established under a law of a province; or

(b) the trial division or trial court of the superior court of the province within which the court, person or body exercises its jurisdiction, in any other case.

a) la Section de première instance de la Cour fédérale, dans les cas où l'organisme ou la personne investis du pouvoir de contraindre à la production de renseignements en vertu d'une loi fédérale ne constituent pas un tribunal régi par le droit d'une province;

b) la division ou cour de première instance de la cour supérieure de la province dans le ressort de laquelle le tribunal, l'organisme ou la personne ont compétence, dans les autres cas.

Limitation period

(4) An application pursuant to subsection (3) shall be made within ten days after the objection is made or within such further or lesser time as the court having jurisdiction to hear the application considers appropriate in the circumstances.

Délai

(4) Le délai dans lequel la demande visée au paragraphe (3) peut être faite est de dix jours suivant l'opposition, mais le tribunal saisi peut modifier ce délai s'il l'estime indiqué dans les circonstances.

Appeal to court of appeal

(5) An appeal lies from a determination under subsection (2) or (3)

(a) to the Federal Court of Appeal from a determination of the Federal Court—Trial Division; or

(b) to the court of appeal of a province from a determination of a trial division or trial court of a superior court of a province.

Appels devant les cours d'appel

(5) L'appel des décisions rendues en vertu des paragraphes 92) ou (3) se fait :

a) devant la Cour d'appel fédérale, pour ce qui est de celles de la Section de première instance de la Cour fédérale;

b) devant la cour d'appel d'une province, pour ce qui est de celles de la division ou cour de première instance d'une cour supérieure d'une province.

Limitation period for appeal under subsection (5)

(6) An appeal under subsection (5) shall be brought within ten days from the date of the determination appealed from or within such further time as the court having jurisdiction to hear the appeal considers appropriate in the circumstances.

Délai d'appel

(6) Le délai dans lequel l'appel prévu au paragraphe (5) peut être interjeté est de dix jours suivant la date de la décision frappée d'appel, mais la cour d'appel peut le proroger si elle l'estime indiqué dans les circonstances.

Limitation periods for appeals to Supreme Court of Canada

(7) Notwithstanding any other Act of Parliament,

(a) an application for leave to appeal to the Supreme Court of Canada from a judgment made pursuant to subsection (5) shall be made within ten days from the date of the judgment appealed from or within such further time as the court having jurisdiction to grant leave to appeal considers appropriate in the circumstances; and

(b) where leave to appeal is granted, the appeal shall be brought in the manner set out in subsection 60(1) of the *Supreme Court Act* but within such time as the court that grants leave specifies.

Délai de demande d'autorisation d'en appeler à la Cour suprême du Canada

(7) Nonobstant toute autre loi fédérale :

a) le délai de demande d'autorisation d'en appeler à la Cour suprême du Canada est de dix jours suivant le jugement frappé d'appel, visé au paragraphe (5), mais le tribunal compétent pour autoriser l'appel peut proroger ce délai s'il l'estime indiqué dans les circonstances;

b) dans les cas où l'autorisation est accordée, l'appel est interjeté conformément au paragraphe 60(1) de la *Loi sur la Cour suprême*, mais le délai qui s'applique est celui qu'a fixé le tribunal qui a autorisé l'appel.

Objection relating to international relations or national defence or security

38. (1) Where an objection to the disclosure of information is made under subsection 37(1) on grounds that the disclosure would be injurious to international relations or national defence or security, the objection may be determined, on application, in accordance with subsection 37(2) only by the Chief Justice of the Federal Court, or such other judge of that Court as the Chief Justice may designate to hear such applications.

Opposition relative aux relations internationales ou à la défense ou à la sécurité nationales

38. (1) Dans les cas où l'opposition visée au paragraphe 37(1) se fonde sur le motif que la divulgation porterait préjudice aux relations internationales ou à la défense ou à la sécurité nationales, la question peut être décidée conformément au paragraphe 37(2), sur demande, mais uniquement par le juge en chef de la Cour fédérale ou tout autre juge de ce tribunal qu'il charge de l'audition de ce genre de demande.

Limitation period

(2) An application under subsection (1) shall be made within ten days after the objection is made or within such further or lesser time as the Chief Justice of the Federal Court, or such other judge of that Court as the Chief Justice may designate to hear such applications, considers appropriate.

Délai

(2) Le délai dans lequel la demande visée au paragraphe (1) peut être faite est de dix jours suivant l'opposition, mais le juge en chef de la Cour fédérale ou le juge de ce tribunal qu'il charge de l'audition de ce genre de demande peut modifier ce délai s'il l'estime indiqué.

Appeal to Federal Court of Appeal

(3) an appeal lies from a determination under subsection (1) to the Federal Court of Appeal.

Appel devant la Cour d'appel fédérale

(3) Il y a appel de la décision visée au paragraphe (1) devant la Cour d'appel fédérale.

Subsection 36(6) and (7) apply

(4) Subsection 37(6) applies in respect of appeals under subsection (3), and subsection 37(7) applies in respect of appeals from judgments made pursuant to subsection (3), with such modifications as the circumstances require.

(4) Le paragraphe 37(6) s'applique aux appels prévus au paragraphe (3) et le paragraphe 37(7) s'applique aux appels des jugements rendus en vertu du paragraphe (3), compte tenu des adaptations de circonstance.

Application des par. 37(6) et (7)

Special rules for hearings

(5) An application under subsection (1) or an appeal brought in respect of the application shall

(a) be heard *in camera*, and

(b) on the request of the person objecting to the disclosure of information, be heard and determined in the National Capital Region described in the schedule to the *National Capital Act*.

(5) Les demandes visées au paragraphe (1) font, en premier ressort ou en appel, l'objet d'une audition à huis clos; celle-ci a lieu dans la région de la capitale nationale définie à l'annexe de la *Loi sur la capitale nationale* si la personne qui s'oppose à la divulgation le demande.

Règles spéciales

Ex parte representations

(6) During the hearing of an application under subsection (1) or an appeal brought in respect of the application, the person who made the objection in respect of which the application was made or the appeal was brought shall, on the request of that person, be given the opportunity to make representations *ex parte*.

(6) La personne qui a porté l'opposition qui fait l'objet d'une demande ou d'un appel a, au cours des auditions, en première instance ou en appel et sur demande, le droit de présenter des arguments en l'absence d'une autre partie.

Présentation d'arguments en l'absence d'une partie

Objection relating to a confidence of the Queen's Privy Council

39. (1) Where a minister of the Crown or the Clerk of the Privy Council objects to the disclosure of information before a court, person or body with jurisdiction to compel the production of information by certifying in writing that the information constitutes a confidence of the Queen's Privy Council for Canada, disclosure of the information shall be refused without examination or hearing of the information by the court, person or body.

39. (1) Le tribunal, l'organisme ou la personne qui ont le pouvoir de contraindre à la production de renseignements sont, dans les cas où un ministre ou le greffier du Conseil privé s'opposent à la divulgation d'un renseignement, tenus d'en refuser la divulgation, sans l'examiner ni tenir d'audition à son sujet, si le ministre ou le greffier attestent par écrit que le renseignement constitue un renseignement confidentiel du Conseil privé de la Reine pour le Canada.

Opposition relative à un renseignement confidentiel du Conseil privé de la Reine pour le Canada

Definition

(2) For the purpose of subsection (1), "a confidence of the Queen's Privy Council for Canada" includes, without restricting the generality thereof, information contained in

(a) a memorandum the purpose of which is to present proposals or recommendations to Council;

(b) a discussion paper the purpose of which is to present background explanations, analyses of problems or policy options to Council for consideration by Council in making decisions;

(c) an agendum of Council or a record recording deliberations or decisions of Council;

(d) a record used for or reflecting communications or discussions between ministers of the Crown on matters relating to the making of government decisions or the formulation of government policy;

(e) a record the purpose of which is to brief Ministers of the Crown in relation to matters that are brought before, or are proposed to be brought before, Council or that are the subject of communications or discussions referred to in paragraph *(d)*; and

(f) draft legislation.

Définition

(2) Pour l'application du paragraphe (1), un «renseignement confidentiel du Conseil privé de la Reine pour le Canada» s'entend notamment d'un renseignement contenu dans :

a) une note destinée à soumettre des propositions ou recommandations au Conseil;

b) un document de travail destiné à présenter des problèmes, des analyses ou des options politiques à l'examen du Conseil;

c) un ordre du jour du Conseil ou un procès-verbal de ses délibérations ou décisions;

d) un document employé en vue ou faisant état de communications ou de discussions entre ministres sur des questions liées à la prise des décisions du gouvernement ou à la formulation de sa politique;

e) un document d'information à l'usage des ministres sur des questions portées ou qu'il est prévu de porter devant le Conseil, ou sur des questions qui font l'objet des communications ou discussions visées à l'alinéa *d*);

f) un avant-projet de loi.

Definition of "Council"

(3) For the purposes of subsection (2), "Council" means the Queen's Privy Council for Canada, committees of the Queen's Privy Council for Canada, Cabinet and committees of Cabinet.

Definition de «Conseil»

(3) Pour l'application du paragraphe (2), «Conseil» s'entend du Conseil privé de la Reine pour le Canada, du Cabinet et de leurs comités respectifs.

Exception

(4) subsection (1) does not apply in respect of

(a) a confidence of the Queen's Privy Council for Canada that has been in existence for more than twenty years; or

(b) a discussion paper described in paragraph (2)*(b)*

(i) if the decisions to which the discussion paper relates have been made public, or

(ii) where the decisions have not been made public, if four years have passed since the decisions were made.

Exception

(4) Le paragraphe (1) ne s'applique pas :

a) à un renseignement confidentiel du Conseil privé de la Reine pour le Canada dont l'existence remonte à plus de vingt ans;

b) à un document de travail visé à l'alinéa (2)*b*), dans les cas où les décisions auxquelles il se rapporte ont été rendues publiques ou, à défaut de publicité, ont été rendues quatre ans auparavant.